

2-2-2016

Visser v. Auto Alley, LLC Clerk's Record v. 2 Dckt. 43432

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Vol. 2 of 5

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

S.C. # 43432-2015
Bonner # CV-2013-1045

DOUGLAS VISSER,
Plaintiff / Respondent

vs.

**AUTO ALLEY, LLC., CALVIN VISSER and
VICKI VISSER,**
Defendant / Appellants

CLERK'S RECORD ON APPEAL

*Appealed from the District Court of the First Judicial District
of the State of Idaho, in and for the County of Bonner.*

Brent Featherston,
Attorney at Law
Attorney for Respondent

Toby McLaughlin,
Attorney at Law
Attorney for Appellant

VOLUME II

LAW CLERK

43432

FILED - COPY
MAR 03 2016
Supreme Court _____ Court of Appeals _____
Entered on ATS by _____

IN THE SUPREME COURT OF THE
STATE OF IDAHO

DOUGLAS VISSER,

Plaintiff-Respondent,

v.

AUTO ALLEY, LLC., CALVIN VISSER and
VICKI VISSER,

Defendant-Appellants,

Appeal from the First Judicial District, Bonner
County, Idaho

HONORABLE BARBARA A. BUCHANAN,
presiding,

Brent C. Featherston, Attorney at Law
113 S. Second Avenue, Sandpoint, Idaho 83864

Toby McLaughlin, Attorney at Law
414 Church Street, Ste 203, Sandpoint, Idaho 83864

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User		Judge
6/25/2013	NCOC	KRAMES	New Case Filed - Other Claims	Barbara A. Buchanan
	APER	KRAMES	Plaintiff: Visser, Douglas Appearance Brent Featherston	Barbara A. Buchanan
		KRAMES	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Featherston, Brent (attorney for Visser, Douglas) Receipt number: 0492649 Dated: 6/25/2013 Amount: \$96.00 (Check) For: Visser, Douglas (plaintiff)	Barbara A. Buchanan
	COMP	HENDRICKSO	Complaint Filed	Barbara A. Buchanan
	SMIS	HENDRICKSO	Summons Issued - Vicki Visser original to file	Barbara A. Buchanan
	SMIS	HENDRICKSO	Summons Issued - Calvin Visser original to file	Barbara A. Buchanan
	SMIS	HENDRICKSO	Summons Issued - Auto Alley, LLC original to file	Barbara A. Buchanan
	MOTN	HENDRICKSO	Motion for Preliminary Injunction/Temporary Restraining Order	Barbara A. Buchanan
	APPL	HENDRICKSO	Application for Prejudgment Attachment and order to Show Cause/Temporary Restraining Order	Barbara A. Buchanan
	AFFD	HENDRICKSO	Affidavit of Douglas Visser In Support of Temporary Restraining Order/Preliminary Injunction	Barbara A. Buchanan
7/3/2013	ORDR	HENDRICKSO	Order to Show Cause/Temporary Restraining Order	Barbara A. Buchanan
	HRSC	HENDRICKSO	Hearing Scheduled (Order to Show Cause 07/17/2013 02:00 PM) Order Show Cause/Temporary Restraining Order	Barbara A. Buchanan
7/8/2013	BNDC	HUMRICH	Bond Posted - Cash (Receipt 493189 Dated 7/8/2013 for 10000.00)	Barbara A. Buchanan
7/15/2013	AFSV	HENDRICKSO	Affidavit Of Service - Calvin Visser served 07-09-13	Barbara A. Buchanan
	AFSV	HENDRICKSO	Affidavit Of Service - Vicki Visser served 07-09-13	Barbara A. Buchanan
	AFSV	HENDRICKSO	Affidavit Of Service - Calvin Visser - registered Agent for Auto Alley, LLC served 7-9-13	Barbara A. Buchanan
7/17/2013		KRAMES	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Margaret Williams, Attorney at Law Receipt number: 0493694 Dated: 7/17/2013 Amount: \$66.00 (Check) For: Auto Alley, Llc, (defendant), Visser, Calvin (defendant) and Visser, Vicki (defendant)	Barbara A. Buchanan
	NOAP	CMOORE	Notice of Appearance (Margaret Williams and Brandie Rouse for Defendants)	Barbara A. Buchanan
	APER	CMOORE	Defendant: Auto Alley, Llc, Appearance Margaret Williams	Barbara A. Buchanan

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User	Judge
7/17/2013	APER	CMOORE	Defendant: Auto Alley, Llc, Appearance Brandie J Rouse Barbara A. Buchanan
	APER	HENDRICKSO	Defendant: Visser, Calvin Appearance Margaret Williams Barbara A. Buchanan
	APER	HENDRICKSO	Defendant: Visser, Calvin Appearance Brandie J Rouse Barbara A. Buchanan
	APER	HENDRICKSO	Defendant: Visser, Vicki Appearance Margaret Williams Barbara A. Buchanan
	APER	HENDRICKSO	Defendant: Visser, Vicki Appearance Brandie J Rouse Barbara A. Buchanan
	CONT	SECK	Continued (Order to Show Cause 07/24/2013 09:00 AM) Temporary Restraining Order - reset by BAB from bench Barbara A. Buchanan
		SECK	Notice Of Hearing Barbara A. Buchanan
	CMIN	SECK	Court Minutes Hearing type: Order to Show Cause Hearing date: 7/17/2013 Time: 2:16 pm Courtroom: Court reporter: Sheryl Engler Minutes Clerk: Melissa Seck Tape Number: ct 1 Brent Featherston Brandie Rouse Barbara A. Buchanan
7/24/2013	HRVC	OPPELT	Hearing result for Order to Show Cause scheduled on 07/24/2013 09:00 AM: Hearing Vacated Temporary Restraining Order - reset by BAB from bench - Per Brent Featherston Barbara A. Buchanan
7/25/2013	STIP	OPPELT	Stipulation for Continuation of Temporary Restraining Order/Preliminary Injunction and Prejudgment Writ of Attachment Barbara A. Buchanan
7/29/2013	ORDR	HENDRICKSO	Order Continuing Temporary Restraining Order/Preliminary Injunction and Prejudgment Writ of Attachment Barbara A. Buchanan
8/13/2013	BNDE	HENDRICKSO	Cash Bond Exonerated (Amount 10,000.00) Barbara A. Buchanan
8/19/2013	MISC	HENDRICKSO	Acknowledgment Pursuant to Rule 16(k)(7) IRCP Regarding Case Status/Mediation *Mediation resulted in a conditional resolution of the matter* Barbara A. Buchanan
10/10/2013	HRSC	OPPELT	Hearing Scheduled (Status 11/06/2013 11:15 AM) Re: Mediated Settlement Barbara A. Buchanan
		OPPELT	Notice Of Hearing Barbara A. Buchanan

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User	Judge
11/6/2013	CMIN	AYERLE	Barbara A. Buchanan
			Court Minutes Hearing type: Status Re Mediated Settlement Hearing date: 11/6/2013 Time: 11:19 am Courtroom: Court reporter: Val Larson Minutes Clerk: Susan Ayerle Tape Number: 1 Brent Featherston for PI Brandi Rouse telephonically for Def Vickie Visser
	DCHH	OPPELT	Barbara A. Buchanan
			Hearing result for Status scheduled on 11/06/2013 11:15 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: Re: Mediated Settlement (Brandie Rouse by telephone) - Less Than 100 Pages
1/15/2014	HRSC	OPPELT	Barbara A. Buchanan
			Hearing Scheduled (Status 02/19/2014 11:15 AM) Regarding Settlement
		OPPELT	Barbara A. Buchanan
			Notice Of Hearing
1/21/2014	MISC	HENDRICKSO	Barbara A. Buchanan
			Letter to Judge Buchanan re: Settlement Agreement
2/18/2014	LETT	HENDRICKSO	Barbara A. Buchanan
			Letter from Attorney Featherston
2/19/2014	HRVC	CMOORE	Barbara A. Buchanan
			Hearing result for Status scheduled Regarding Settlement on 02/19/2014 11:15 AM: Hearing Vacated - Judgment entered
	JDMT	HENDRICKSO	Barbara A. Buchanan
			Judgment (12 pgs)
	CDIS	HENDRICKSO	Barbara A. Buchanan
			Civil Disposition entered for: Auto Alley, Llc,, Defendant; Visser, Calvin, Defendant; Visser, Vicki, Defendant; Visser, Douglas, Plaintiff. Filing date: 2/19/2014
	STAT	HENDRICKSO	Barbara A. Buchanan
			STATUS CHANGED: closed
2/24/2014		HUMRICH	Barbara A. Buchanan
			Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Visser, Douglas Receipt number: 0002908 Dated: 2/24/2014 Amount: \$12.00 (Check)
		HUMRICH	Barbara A. Buchanan
			Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Visser, Douglas Receipt number: 0002908 Dated: 2/24/2014 Amount: \$1.00 (Check)
4/3/2014	MISC	HENDRICKSO	Barbara A. Buchanan
			Letter from Attorney Featherston to Court
	MOTN	HENDRICKSO	Barbara A. Buchanan
			Motion for Writ of Possession and Judgment of Quiet Title
	AFFD	HENDRICKSO	Barbara A. Buchanan
			Affidavit of Counsel in Support of Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User	Judge
4/3/2014	AFFD	HENDRICKSO	Affidavit of Douglas Visser in Support of Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title Barbara A. Buchanan
4/8/2014	NOFH	OPPELT	Notice Of Hearing Re: Motion for Writ of Possession and Judgment of Quiet Title Barbara A. Buchanan
	HRSC	OPPELT	Hearing Scheduled (Motion 04/23/2014 11:30 AM) for Writ of Possession and Judgment of Quiet Title Barbara A. Buchanan
	STAT	OPPELT	STATUS CHANGED: Closed pending clerk action Barbara A. Buchanan
4/21/2014	OBJC	CMOORE	Objection to Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title Barbara A. Buchanan
4/23/2014	CMIN	OPPELT	Court Minutes Hearing type: Motion for Writ of Possession & Jdmt of Quiet Titl Hearing date: 4/23/2014 Time: 11:32 am Courtroom: Court reporter: Non Minutes Clerk: Linda Oppelt Tape Number: 1+ Brent Featherston Margaret Williams Barbara A. Buchanan
	EXHB	OPPELT	Exhibit List Barbara A. Buchanan
	DCHH	OPPELT	Hearing result for Motion scheduled on 04/23/2014 11:30 AM: District Court Hearing Held Court Reporter: None Number of Transcript Pages for this hearing estimated: for Writ of Possession and Judgment of Quiet Title - Less Than 100 Pages Barbara A. Buchanan
	DENY	OPPELT	Hearing result for Motion scheduled on 04/23/2014 11:30 AM: Motion Denied Barbara A. Buchanan
4/25/2014	MEMO	HENDRICKSO	Memorandum of Fees and Costs Barbara A. Buchanan
5/5/2014	JDMT	HENDRICKSO	Judgment re: Writ of Possession and Quiet Title (3 pgs) Barbara A. Buchanan
	CDIS	HENDRICKSO	Civil Disposition entered for: Auto Alley, Llc,, Defendant; Visser, Calvin, Defendant; Visser, Vicki, Defendant; Visser, Douglas, Plaintiff. Filing date: 5/5/2014 Barbara A. Buchanan
5/7/2014	MOTN	CMOORE	Motion Re: Plaintiff's Interference with Defendants' Ability to Comply with the Judgment and Notice of Hearing Barbara A. Buchanan
	HRSC	CMOORE	Hearing Scheduled (Motion 05/21/2014 03:30 PM) Re: Plaintiffs Interference with Defendants' Ability to Comply with the Judgment Barbara A. Buchanan
5/14/2014	NOSV	HENDRICKSO	Notice of Service re: updated Phase I Environmental Site Assessment Barbara A. Buchanan

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User	Judge
5/21/2014	CMIN	AYERLE	Barbara A. Buchanan
			Court Minutes Hearing type: Mtn Re PI Interference with Def Ability to Comply Hearing date: 5/21/2014 Time: 3:46 pm Courtroom: Court reporter: Val Larson Minutes Clerk: Susan Ayerle Tape Number: 1 Brent Featherston for PI Margaret Williams for Def
	DCHH	OPPELT	Barbara A. Buchanan
			Hearing result for Motion scheduled on 05/21/2014 03:30 PM: District Court Hearing Hel Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: Re: Plaintiffs Interference with Defendants' Ability to Comply with the Judgment - Less Than 100 Pages
	DENY	OPPELT	Barbara A. Buchanan
			Hearing result for Motion scheduled on 05/21/2014 03:30 PM: Motion Denied Re: Plaintiffs Interference with Defendants' Ability to Comply with the Judgment
	STAT	OPPELT	Barbara A. Buchanan
			STATUS CHANGED: closed
5/22/2014	EXHB	OPPELT	Barbara A. Buchanan
			Exhibit List
5/23/2014	ORDR	HENDRICKSO	Barbara A. Buchanan
			Order Denying Motion re: Plaintiffs Interference with Defendants' Ability to Comply with the Judgment
3/24/2015	NOTC	HENDRICKSO	Barbara A. Buchanan
			Notice of Association of Counsel - Attorney M. Williams
3/26/2015	MOTN	HENDRICKSO	Barbara A. Buchanan
			Motion for Contempt
	AFFD	HENDRICKSO	Barbara A. Buchanan
			Affidavit of Vicki Visser in Support of Motion for Contempt
3/27/2015	NOFH	CMOORE	Barbara A. Buchanan
			Amended Notice of Hearing
	MOTN	HENDRICKSO	Barbara A. Buchanan
			Motion for Judgment of Quiet Title and Writ of Possession and Notice of Hearing
	HRSC	HENDRICKSO	Barbara A. Buchanan
			Hearing Scheduled (Motion 04/23/2014 11:30 AM) Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title (***INCORRECT YEAR GIVEN ON NOTICE OF HEARING*****)
	AFFD	HENDRICKSO	Barbara A. Buchanan
			Affidavit of Douglas Visser in Support of Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title
	NOHG	HENDRICKSO	Barbara A. Buchanan
			Amended Notice of Hearing re: Plaintiff's Judgment of Quiet Title and Motion for Writ of Possession

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User		Judge
3/27/2015	CONT	HENDRICKSO	Continued (Motion 04/10/2015 01:30 PM) Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title	Barbara A. Buchanan
3/30/2015	NOHG	HENDRICKSO	Notice of Hearing and Advisement of Rights	Barbara A. Buchanan
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 05/06/2015 10:00 AM) Defendant's Motion	Barbara A. Buchanan
	MOTN	HENDRICKSO	Motion, Memorandum and Affidavit to Vacate and Reset the Plaintiff's Hearing on a Motion for Judgment of Quiet Title and Writ of Possession	Barbara A. Buchanan
4/6/2015	ORDR	HUMRICH	Order to Vacate and Reset the Plaintiff's Hearing on a Motion for Judgment of Quiet Title and Writ of Possession & Order to Vacate and Reset Defendants' Hearing on Motion for Contempt	Barbara A. Buchanan
	CONT	HUMRICH	Hearing result for Motion scheduled on 04/10/2015 01:30 PM: Continued Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title - Continued to May 20, 2015 @ 1:30 pm	Barbara A. Buchanan
	CONT	HUMRICH	Hearing result for Motion scheduled on 05/06/2015 10:00 AM: Continued Defendant's Motion - Continued to May 20, 2015 @ 1:30 pm	Barbara A. Buchanan
	HRSC	HUMRICH	Hearing Scheduled (Motion 05/20/2015 01:30 PM) Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title and Defendants' Motion for Contempt	Barbara A. Buchanan
	HRSC	HUMRICH	Hearing Scheduled (Motion 05/20/2015 01:30 PM) Defendants' Motion for Contempt	Barbara A. Buchanan
	NOFH	BOWERS	Second Amended Notice of Hearing	Barbara A. Buchanan
5/13/2015		HUMRICH	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Berg & McLaughlin Receipt number: 0006906 Dated: 5/13/2015 Amount: \$136.00 (Check) For: Visser, Vicki (defendant)	Barbara A. Buchanan
	MEMO	HENDRICKSO	Defendants' Memorandum in Opposition to Plaintiff's Motion Judgment of Quiet Title and Writ of Possession	Barbara A. Buchanan
	AFFD	HENDRICKSO	Affidavit of Joe Lapham in Response to Plaintiff's Motion to Quiet Title	Barbara A. Buchanan
	AFFD	HENDRICKSO	Affidvit of Vicki Visser in Response to Plaintiff's Motion to Quiet Title	Barbara A. Buchanan
	AFFD	HENDRICKSO	Affidavit of Counsel in Support of Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title	Barbara A. Buchanan
	REPL	HENDRICKSO	Plaintiff's Reply Memorandum in Support of Motion for Judgment of Quiet Title and Writ of Possession and in Support of Motion to Dismiss Defendants; Motion for Contempt	Barbara A. Buchanan

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User	Judge
5/19/2015	MOTN	HENDRICKSO	Motion to Strike Affidavit of Joe Lapham in Responses to Plaintiff's Motion to Quiet Title
	SUBP	HENDRICKSO	Amended Subpoena Duces Tecum (Margaret Williams, Esq.) for Production or Inseption of Documents, Electronically Stored Information, or Tangible Things
	SUBP	HENDRICKSO	Amended Subpoena Duces Tecum (Panhandle Escrow Services, Inc) for Production or Inseption of Documents, Electronically Stored Information, or Tangible Things
	SUBP	HENDRICKSO	Amended Subpoena Duces Tecum (Vicki Visser) for Production or Inseption of Documents, Electronically Stored Information, or Tangible Things
	SUBP	HENDRICKSO	Amended Subpoena Duces Tecum (Bonner County Treasurer) for Production or Inseption of Documents, Electronically Stored Information, or Tangible Things
	SUBP	HENDRICKSO	Amended Subpoena Duces Tecum (Loan Star Mortgage) for Production or Inseption of Documents, Electronically Stored Information, or Tangible Things
5/20/2015	HRSC	PHILLIPS	Hearing Scheduled (Motion 05/28/2015 09:00 AM) Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title
	HRSC	PHILLIPS	Hearing Scheduled (Evidentiary 05/28/2015 09:00 AM) on Contempt
		PHILLIPS	Notice Of Hearing
	CMIN	PHILLIPS	Court Minutes Hearing type: Motion for Quiet Title and Writ; Motn for Contemp Hearing date: 5/20/2015 Time: 1:35 pm Courtroom: Court reporter: Minutes Clerk: Ann Phillips Tape Number: 1 Brent Featherston Douglas Visser Toby McLaughlin Vicki Visser, Calvin Visser
	DCHH	OPPELT	Hearing result for Motion scheduled on 05/20/2015 01:30 PM: District Court Hearing Held Court Reporter: Julie Mccaughan Number of Transcript Pages for this hearing estimated: Defendants' Motion for Contempt - Less Than 100 Pages

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User	Judge
5/20/2015	DENT	OPPELT	Hearing result for Motion scheduled on 05/20/2015 01:30 PM: Defendants' Motion for Contempt - Denial Entered
	DCHH	OPPELT	Hearing result for Motion scheduled on 05/20/2015 01:30 PM: District Court Hearing Held Court Reporter: Julie Mccaughan Number of Transcript Pages for this hearing estimated: Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title - Less Than 100 Pages (Hearing Continued to 5-28-15 at 2:30 pm)
5/22/2015	SUBP	HENDRICKSO	Second Amended Subpoena Duces Tecum for Production or Inspection of Documents, Electronically Stored Information, or Tangible Things (re: Panhandle Escrow Services, Inc)
	SUBP	HENDRICKSO	Second Amended Subpoena (re: Calvin Visser c/o D. Toby McLaughlin)
	SUBP	HENDRICKSO	Second Amended Subpoena (re: Margaret Williams, Esq.)
	SUBP	HENDRICKSO	Second Amended Subpoena (re: Vicki Visser c/o D. Toby McLaughlin)
	SUBP	HENDRICKSO	Second Amended Subpoena Duces Tecum for Production or Inspection of Documents, Electronically Stored Information, or Tangible Things
	SUBP	HENDRICKSO	Second Amended Subpoena Duces Tecum for Production or Inspection of Documents, Electronically Stored Information, or Tangible Things (re: Loan Star Mortgage Attn: Jeff Eich)
	SUBP	HENDRICKSO	Second Amended Subpoena Duces Tecum for Production or Inspection of Documents, Electronically Stored Information, or Tangible Things
	SUBP	HENDRICKSO	Subpoena issued re: Rex A. Finney, Esp Finney, Finney, & Finney, PA

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User	Judge
5/28/2015	CMIN	OPPELT	Barbara A. Buchanan
		Court Minutes Hearing type: Motion for Writ of Possession/Evidentiary Hearing date: 5/28/2015 Time: 9:03 am Courtroom: Court reporter: Val Larson Minutes Clerk: Linda Oppelt Tape Number: 3+ Toby McLaughlin Brent Featherston Vicki Visser Doug Visser	
	DCHH	OPPELT	Barbara A. Buchanan
		Hearing result for Evidentiary scheduled on 05/28/2015 09:00 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: on Contempt - More Than 100 Pages	
	DCHH	OPPELT	Barbara A. Buchanan
		Hearing result for Motion scheduled on 05/28/2015 09:00 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title - More Than 100 Pages	
	EXHB	OPPELT	Barbara A. Buchanan
	HRSC	OPPELT	Barbara A. Buchanan
		Hearing Scheduled (Evidentiary 05/29/2015 09:00 AM)	
	HRSC	OPPELT	Barbara A. Buchanan
		Hearing Scheduled (Motion 05/29/2015 09:00 AM) for Writ of Possession and Judgment of Quiet Title	
		OPPELT	Barbara A. Buchanan
	CMIN	OPPELT	Barbara A. Buchanan
		Court Minutes Hearing type: Motion for Writ of Possession/Evidentiary Hearing date: 5/29/2015 Time: 9:11 am Courtroom: Court reporter: Val Larson Minutes Clerk: Linda Oppelt Tape Number: 1+ Brent Featherston Toby McLaughlin Vicki Visser Doug Visser Calvin Visser	
	EXHB	OPPELT	Barbara A. Buchanan
		Exhibit List	

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User	Judge
5/29/2015	DCHH	OPPELT	Hearing result for Motion scheduled on 05/29/2015 09:00 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: for Writ of Possession and Judgment of Quiet Title - More Than 100 Pages
	DCHH	OPPELT	Hearing result for Evidentiary scheduled on 05/29/2015 09:00 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: More Than 100 Pages
6/12/2015	BREF	HENDRICKSO	Plaintiff's Post Trial Brief
	BREF	HENDRICKSO	Defendants' Post-Trial Brief
6/19/2015	MISC	HENDRICKSO	Lis Pendens Issued (copy to file)
6/24/2015	BREF	OPPELT	Plaintiff's Post Trial Reply Brief
6/25/2015	REPL	HENDRICKSO	Defendants' Reply to Plaintiff's Post-Trial Brief
7/6/2015	MEMO	HENDRICKSO	Memorandum Decision and Order
7/15/2015	OBJC	HENDRICKSO	Defendant's Objection to Writ of Possession
	LETT	HENDRICKSO	Letter from Attorney Featherston re: Defendant's Objection to Writ of Possession
7/16/2015	ORDR	HENDRICKSO	Order Releasing Lis Pendens
	WRIT	HENDRICKSO	Writ of Possession Issued
7/17/2015	HRSC	HUMRICH	Hearing Scheduled (Motion 08/05/2015 03:30 PM) Def's Motion for Reconsideration
	NOHG	HENDRICKSO	Notice Of Hearing re: Motion for Reconsideration
7/20/2015		HENDRICKSO	Miscellaneous Payment: Writs Of Execution Paid by: Featherston Law Receipt number: 0010400 Dated: 7/20/2015 Amount: \$2.00 (Check)
	MOTN	HENDRICKSO	Defendants' Motion for Reconsideration and for Stay Of Execution of Judgment
	MEMO	HENDRICKSO	Memorandum in Support of Defendants' Motion for Reconsideration and For Stay of Execution of Judgment
	NOHG	HENDRICKSO	Notice of Hearing re: Motion for Reconsideration and Motion for Stay of Execution of Judgment
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 08/05/2015 03:30 PM) Defendant's Motion for Reconsideration
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 08/05/2015 03:30 PM) Defendant's Motion for Stay of Execution of Judgment
	MEMO	HENDRICKSO	Second Memorandum of Fees and Costs

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User		Judge
7/29/2015	APPL	HENDRICKSO	Plaintiff's Application for Prejudgment Attachment and Order to Show Cause/Temporary Restraining Order	Barbara A. Buchanan
	MOTN	HENDRICKSO	Motin to Allow Attorney's Fees, Motion to shorten Time and Notice of Hearing	Barbara A. Buchanan
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 08/05/2015 03:30 PM) Plaintiff's Motion to Allow Attorney's Fees	Barbara A. Buchanan
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 08/05/2015 03:30 PM) Plaintiff's Motion to Shorten Time	Barbara A. Buchanan
	RSPN	HENDRICKSO	Plaintiff's Response to Defendants' Motion for Reconsideration and For Stay of Judgment	Barbara A. Buchanan
7/31/2015	OSC	HENDRICKSO	Order to Show Cause/Temporary Restraining Order re: Writ of Attachment	Barbara A. Buchanan
	HRSC	HENDRICKSO	Hearing Scheduled (Order to Show Cause 08/05/2015 03:30 PM)	Barbara A. Buchanan
8/5/2015	DCHH	OPPELT	Hearing result for Order to Show Cause scheduled on 08/05/2015 03:30 PM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: More Than 100 Pages	Barbara A. Buchanan
	GRNT	OPPELT	Hearing result for Order to Show Cause scheduled on 08/05/2015 03:30 PM: Motion Granted	Barbara A. Buchanan
	GRNT	OPPELT	Hearing result for Motion scheduled on 08/05/2015 03:30 PM: Motion Granted Plaintiff's Motion to Shorten Time	Barbara A. Buchanan
	GRNT	OPPELT	Hearing result for Motion scheduled on 08/05/2015 03:30 PM: Motion Granted Plaintiff's Motion to Allow Attorney's Fees	Barbara A. Buchanan
	DENY	OPPELT	Hearing result for Motion scheduled on 08/05/2015 03:30 PM: Motion Denied Defendant's Motion for Stay of Execution of Judgment	Barbara A. Buchanan
	DENY	OPPELT	Hearing result for Motion scheduled on 08/05/2015 03:30 PM: Motion Denied Defendant's Motion for Reconsideration	Barbara A. Buchanan
	AFSV	HENDRICKSO	Affidavit of Service re: Plaintiff's Application for Prejudgment Attachment and Order to Show Case/Temporary Restraining Order	Barbara A. Buchanan
	JDMT	HENDRICKSO	Judgment re: Attorney's Fees and Costs	Barbara A. Buchanan
	CDIS	HENDRICKSO	Civil Disposition entered for: Visser, Douglas, Plaintiff; Auto Alley, LLC,, Defendant; Visser, Calvin, Defendant; Visser, Vicki, Defendant. Filing date: 8/5/2015	Barbara A. Buchanan

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User	Judge
8/6/2015	CMIN	OPPELT	Barbara A. Buchanan
			Court Minutes Hearing type: Various Motions Hearing date: 8/5/2015 Time: 3:31 pm Courtroom: Court reporter: Val Larson Minutes Clerk: Linda Oppelt Tape Number: 1 Brent Featherston Toby McLaughlin Vicki Visser
		HUMRICH	Barbara A. Buchanan
			Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Berg & McLaughlin, CHTD Receipt number: 0011322 Dated: 8/6/2015 Amount: \$129.00 (Check) For: Auto Alley, LLC, (defendant), Visser, Calvin (defendant) and Visser, Vicki (defendant)
	BNDC	HUMRICH	Barbara A. Buchanan
			Bond Posted - Cash (Receipt 11323 Dated 8/6/2015 for 100.00)
	BNDC	HUMRICH	Barbara A. Buchanan
			Bond Posted - Cash (Receipt 11324 Dated 8/6/2015 for 200.00)
	APSC	HUMRICH	Barbara A. Buchanan
			Appealed To The Supreme Court
	NOTA	HUMRICH	Barbara A. Buchanan
			NOTICE OF APPEAL
8/7/2015	ORDR	HENDRICKSO	Barbara A. Buchanan
			Order re: Plaintiff's Application for Prejudgment Attachment and Order to Show Cause
	MEMO	HENDRICKSO	Barbara A. Buchanan
			Memorandum Decision and Order Denying Defendants' Motion for Reconsideration and for Stay Execution of Judgment
	JDMT	HENDRICKSO	Barbara A. Buchanan
			Judgment re: Judgment of Quiet Title in favor of Plaintiff
	CDIS	HENDRICKSO	Barbara A. Buchanan
			Civil Disposition entered for: Auto Alley, LLC,, Defendant; Visser, Calvin, Defendant; Visser, Vicki, Defendant; Visser, Douglas, Plaintiff. Filing date: 8/7/2015
	MOTN	HENDRICKSO	Barbara A. Buchanan
			Motion for a Stay of Execution on Appeal
8/10/2015	ORDN	HENDRICKSO	Barbara A. Buchanan
			Order Denying Stay of Evecution During Pendency of Appeal
8/11/2015	MISC	HUMRICH	Barbara A. Buchanan
			Docket #43432-2015 - Due to ISC 10/09/2015
8/13/2015		BOWERS	Barbara A. Buchanan
			Miscellaneous Payment: For Comparing And Conforming A Prepared Record, Per Page Paid by: Featherston Law Receipt number: 0011674 Dated: 8/13/2015 Amount: \$1.50 (Check)
		BOWERS	Barbara A. Buchanan
			Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Featherston Law Receipt number: 0011674 Dated: 8/13/2015 Amount: \$1.00 (Check)
8/14/2015	MEMO	HENDRICKSO	Barbara A. Buchanan
			Third Memorandum of Fees and Costs

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User		Judge
8/18/2015	SCDF	HUMRICH	Supreme Court Document Filed- Appellant's application for a Stay of Proceedings During the Pendency of Appeal	Barbara A. Buchanan
8/19/2015	APPL	HUMRICH	Ex Parte Application for A Temporary Stay of Execution Pursuant to IAR 13.1	Idaho Supreme Court
8/20/2015	SCDF	HUMRICH	Supreme Court Document Filed- Order Denying application for Temporary Stay	Idaho Supreme Court
8/26/2015		ROSS	Miscellaneous Payment: Writs Of Execution Paid by: Featherston Law Firm Receipt number: 0012339 Dated: 8/26/2015 Amount: \$2.00 (Check)	Barbara A. Buchanan
	WRIT	HENDRICKSO	Writ of Execution Issued - copy to file	Barbara A. Buchanan
	WRIT	HENDRICKSO	Writ of Execution Issued - Copy to file	Barbara A. Buchanan
	WRIT	HENDRICKSO	Writ of Execution Issued - Original to file - in correct amount (attorney to re file)	Barbara A. Buchanan
8/28/2015	MEMO	HENDRICKSO	Memorandum to Court File re: Corrections to Writ Issued	Barbara A. Buchanan
	WRRT	HENDRICKSO	Writ of Execution - Returned to File	Barbara A. Buchanan
	WRIT	HENDRICKSO	Writ of Execution Issued - Copy to file	Barbara A. Buchanan
9/8/2015	CCOA	HUMRICH	Clerk's Certificate Of Appeal	Barbara A. Buchanan
	MISC	HUMRICH	Reset Due Dates - Clerk's Record and Transcripts due ISC 11/17/2015	Barbara A. Buchanan
9/11/2015	SCDF	HUMRICH	Supreme Court Document Filed- Order Denying Application for Stay of Proceedings During the Pendency of Appeal	Idaho Supreme Court
9/16/2015	ORDR	OPPELT	Order Re: Attorney's Fees and Costs	Barbara A. Buchanan
	JDMT	OPPELT	Second Judgment Re: Attorney's Fees and Costs	Barbara A. Buchanan
	CDIS	BOWERS	Civil Disposition entered for: Auto Alley, LLC,, Defendant; Visser, Calvin, Defendant; Visser, Vicki, Defendant; Visser, Douglas, Plaintiff. Filing date: 9/16/2015	Barbara A. Buchanan
10/8/2015	SHRT	KBOWERS	Sheriff's Return on Writ, Served	Barbara A. Buchanan
	WRRT	KBOWERS	Writ Returned- Writ of Execution	Barbara A. Buchanan
10/21/2015	SCDF	HUMRICH	Supreme Court Document Filed- Order Granting court Reporter's Motion for Extension of Time	Idaho Supreme Court
11/19/2015	SCDF	KBOWERS	Supreme Court Document Filed- Order Granting Court Reporter's Motion for Extension of Time	Idaho Supreme Court
	MISC	KBOWERS	Reset Due Dates- Transcripts and Records to ISC 1/19/2016	Barbara A. Buchanan

FEATHERSTON LAW FIRM, CHTD.
BRENT C. FEATHERSTON, ISB NO. 4602
 Attorney at Law
 113 S. Second Avenue
 Sandpoint, ID 83864
 (208) 263-6866
 (208) 263-0400 (Fax)
 brent@featherstonlaw.com

2015 MAR 27 P 1:50

DISTRICT COURT

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man)
 as to his sole and separate property,)

CASE NO. CV-2013-1045

Plaintiff,)

vs.)

**AMENDED
 NOTICE OF HEARING**

AUTO ALLEY, LLC, an Idaho)
 limited liability company, CALVIN)
 VISSER and VICKI VISSER, as)
 individuals and in their capacity as)
 Members and/or Managers of)
 Auto Alley, LLC,)

[April 10, 2015, at 1:30 p.m.]

Defendants.)

YOU ARE HEREBY NOTIFIED that the undersigned, as attorney for the above-named
 Plaintiff, will call for hearing before the Honorable Barbara Buchanan on the Plaintiff's
 Judgment of Quiet Title and Motion for Writ of Possession on April 10, 2015, at 1:30 p.m., or as
 soon thereafter as counsel may be heard.

DATED this 27th day of March, 2015.

FEATHERSTON LAW FIRM, CHTD.
 ATTORNEYS AT LAW

Daniel P. Featherston
 Brent C. Featherston*
 Jeremy P. Featherston
 Jeremi L. Ossman

113 S. Second Ave.
 Sandpoint, ID 83864
 Phone (208) 263-6866
 Fax (208) 263-0400

*Licensed in Idaho & Washington

FEATHERSTON LAW FIRM, CHTD.

By: Brent C. Featherston
BRENT C. FEATHERSTON
 Attorney for Plaintiff

AMENDED NOTICE OF HEARING- 1

CERTIFICATE OF MAILING

I hereby certify that on the 27th day of March, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person in the following manner:

Brandie J. Rouse, Esq.
ROUSE LEGAL SERVICES, PLLC.
6857 W. Heritage St., #1
Rathdrum, ID 83858

- ☐ U.S. Mail, Postage Prepaid
☐ Overnight Mail
☐ Hand delivered
☒ Facsimile No. (866) 478-9467
☐ Other: _____

Margaret Williams, Esq.
P.O. Box 283
Ponderay, ID 83852

- ☐ U.S. Mail, Postage Prepaid
☐ Overnight Mail
☐ Hand delivered
☒ Facsimile No. (888) 336-6064
☐ Other: _____

D. Toby McLaughlin, Esq.
BERG & McLAUGHLIN, CHTD.
414 Church Street, Suite 203
Sandpoint, ID 83864
[Courtesy Copy]

- ☐ U.S. Mail, Postage Prepaid
☐ Overnight Mail
☐ Hand delivered
☒ Facsimile No. (208) 263-7557
☐ Other: _____

By 

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

113 S. Second Ave.
Sandpoint, ID 83864
Phone (208) 263-6866
Fax (208) 263-0400

*Licensed in Idaho & Washington

AMENDED NOTICE OF HEARING- 2

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2015 MAR 30 PM 3 56

CLERK DISTRICT COURT

DEPUTY

1 TOBY McLAUGHLIN, ISB No. 7405
2 Berg & McLaughlin, Chtd.
3 414 Church Street, Ste 203
4 Sandpoint, ID 83864
5 Telephone: (208)263-4748
6 Facsimile: (208)263-7557

7 *Attorneys for Defendants*

8 IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE
9 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

10 NO. CV-2013-1045

11 DOUGLAS VISSER, a married man as to his
12 sole and separate property,

13 Plaintiff-Respondent

14 vs.

15 AUTO ALLEY, LLC, an Idaho limited liability
16 company, CALVIN VISSER and VICKI
17 VISSER, as individuals in their capacity as
18 Members and/or Managers of Auto Alley, LLC,

19 Defendant-Petitioners.

20 NOTICE OF HEARING AND
21 ADVISEMENT OF RIGHTS

22 TO: DOUGLAS VISSER; and his attorney of record
23 BRENT FEATHERSTON

24 You are hereby ordered to appear before this court at May 6th 2015 10:00 Am

25 to admit or deny Defendant's motion to hold you in contempt of court for allegedly violating an
order of this court as more specifically stated in Defendant's Motion and Affidavit served on
you. You have the following right(s):

- 26 1. You have the right to remain silent. Anything you say can be used as evidence
27 against you in court.

- 1 2. You have the right to have an attorney represent you. If you want an attorney and
2 cannot afford one, you may ask the Judge to appoint an attorney to represent you
3 at county expense. You may be required to reimburse the county for the cost of
4 that attorney, however.
- 5 3. You have the right to a trial before a Judge on the issues of whether or not you are
6 in contempt of court (whether you willfully violated the court order). You have
7 the right to subpoena witnesses. You are presumed innocent until proven guilty
8 beyond a reasonable doubt. You have a right to be present during that trial, to
9 watch the witnesses face-to-face as they testify against you, and to ask questions
10 of those witnesses. You have the right to exclude evidence that was obtained in
11 violation of your Fourth Amendment rights provided by the U.S. Constitution and
12 the Article I, Section 17 of the Constitution of the State of Idaho. You also have
13 the right to testify at the trial and to have others testify in your behalf. The
14 maximum penalty for each contempt of court is a fine of up to \$5,000 and up to
15 five (5) days in jail, except that the jail sentence can be up to thirty (30) days if
16 the contempt is failing to obey an order or judgment for the support of minor
17 children.
- 18
- 19 4. If the contempt consists of your failure to do something that you still have the
20 ability to do, you may also be imprisoned or fined until you perform such act.

21

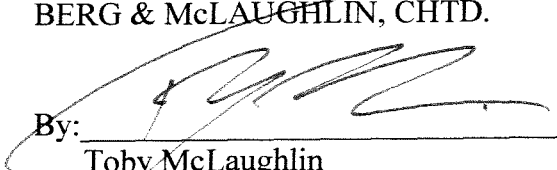
22 The maximum punishment sought by the Defendant is stated in Defendant's *Motion for*
23 *Contempt*. You do not have the right to a jury trial in this case unless the maximum possible
24 punishment exceeds six (6) months. If the maximum possible punishment exceeds six (6)
25 months, then you have the right to a unanimous verdict if there is a jury trial.

1 If you cannot afford an attorney and wish the services of the Public Defender, then you
2 **must** submit a written application to the Bonner County Court. To do so, you must contact the
3 Bonner County Courthouse. The hearing scheduled herein **will not** be postponed or rescheduled
4 except for extraordinary reasons.

5 **YOU ARE FURTHER NOTIFIED THAT IF YOU FAIL TO APPEAR AT THE**
6 **HEARING SCHEDULED HEREIN, THE COURT MAY ISSUE A WARRANT FOR**
7 **YOUR ARREST.**

8
9 DATED this 26TH day of March, 2015.
10

11 BERG & McLAUGHLIN, CHTD.

12
13 By: 
14 Toby McLaughlin
15 Attorneys for the Defendants/Petitioners
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF SERVICE

On March ¹²26, 2015, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Margaret Williams, Esq.
P.O. Box 283
Ponderay, ID 83852

- ☐ By Hand Delivery
☒ By U.S. Mail
☐ By Overnight Mail
☐ By Facsimile Transmission

Attorney for the Defendants/Petitioners

Brent C. Featherston
FEATHERSTON LAW FIRM, CHTD.
113 South Second Ave.
Sandpoint, ID 83864

- ☐ By Hand Delivery
☐ By U.S. Mail
☐ By Overnight Mail
☒ By Facsimile Transmission

Attorneys for the Respondent


Stephanie Allen

1 TOBY McLAUGHLIN, ISB No. 7405
2 JOSH HICKEY ISB No. 9409
3 Berg & McLaughlin, Chtd.
4 414 Church Street, Ste 203
5 Sandpoint, ID 83864
6 Telephone: (208)263-4748
7 Facsimile: (208)263-7557

8 *Attorneys for Defendants*

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2015 MAR 30 PM 3 56

CLERK OF DISTRICT COURT

DEPUTY

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25
IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

NO. CV-2013-1045

DOUGLAS VISSER, a married man as to his
sole and separate property,

Plaintiff,

vs.

AUTO ALLEY, LLC, an Idaho limited liability
company, CALVIN VISSER and VICKI
VISSER, as individuals in their capacity as
Members and/or Managers of Auto Alley, LLC,

Defendants.

MOTION, MEMORANDUM AND
AFFIDAVIT TO VACATE AND RESET
THE PLAINTIFF'S HEARING ON A
MOTION FOR JUDGMENT OF QUIET
TITLE AND WRIT OF POSSESSION

I. MOTION AND MEMORANDUM

COMES NOW, Defendants AUTO ALLEY, LLC *et al.*, by and through their counsel of
record, Josh Hickey of the firm Berg & McLaughlin, Attorneys at Law hereby move the Court
for an Order to Vacate and Reset the hearing in the above referenced matter.

The Defendants respectfully request that the Court immediately vacate the hearing date
which is currently set for April 10, 2015. Defendants' counsel only recently appeared in this
matter, and will need time to review the pleadings on the record, prepare and file a response,
conduct discovery if necessary, and prepare for the hearing. This hearing is set to commence in
fewer than two weeks.

1 Finally, the Defendants have filed their own motion for contempt in this matter, which is
2 currently set for an admit or deny hearing on May 6, 2015 and it would be appropriate for the
3 Court to hear both motions at the same time.

4 Courts have inherent power to grant continuances, independent of statute and as an
5 incident to their authority to hear and determine causes, and a decision to grant or to deny a
6 continuance rests within the judge's sound discretion. *In Interest of Kinley*, 108 Idaho 862, 864
7 (1985). In the instant case, good cause exists to justify a continuance.

8 For these reasons, the Defendants respectfully request that the Court vacate the April 10th
9 hearing in this matter and reschedule it no sooner than one month from this date..

10 DATED this 30th day of March, 2015.

11
12 BERG & McLAUGHLIN, CHTD.

13 By: 

14 JOSH HICKEY

15 Attorneys for Defendants

16 **II. AFFIDAVIT**

17 STATE OF IDAHO)
18) ss.
19 COUNTY OF BONNER)

20 Josh Hickey, being first duly sworn, upon oath, deposes and says:

- 21 1. I am over the age of 18 and am competent to testify herein.
- 22 2. I am an associate attorney for law firm of Berg & McLaughlin, working under the
23 supervision of Toby McLaughlin.
- 24 3. Mr. McLaughlin is currently out of State and will not return to the office until
25 April 6, 2015.

1 4. Mr. McLaughlin appeared in this matter on March 26, 2015 by filing a motion for
2 contempt against the Plaintiff. Mr. McLaughlin filed a notice of association of counsel on March
3 27, 2015.

4 5. The Plaintiff filed the above-referenced motion on March 27, 2015.


5 6. Because this motion is set for hearing within such a short time, and because the
6 Defendants' primary attorney is out of State, there is not sufficient time to prepare and file
7 responsive pleadings, conduct discovery, and prepare for the hearing set for the Plaintiff's
8 motion currently scheduled for April 10, 2015.

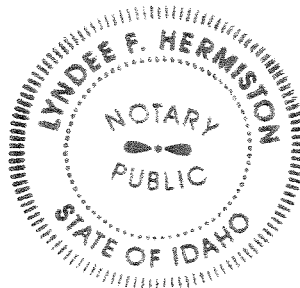
9 7. Additionally, the Defendants have filed their own motion for contempt in this
10 matter, which is currently set for an admit or deny hearing on May 6, 2015 and it would be
11 appropriate for the Court to hear both motions at the same time.

12
13 DATED this 30th day of March, 2015.

14
15 
16 Josh Hickey
Affiant

17 SUBSCRIBED AND SWORN to before me this 30 day of March, 2015.

18 
19 Notary Public: State of Idaho
20 Residing at: Sandpoint Idaho
Commission expires: Dec. 15 2020



CERTIFICATE OF SERVICE

On March 30, 2015, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Margaret Williams, Esq.
P.O. Box 283
Ponderay, ID 83852


Attorney for the Defendants

- ☐ By Hand Delivery
☒ By U.S. Mail
☐ By Overnight Mail
☐ By Facsimile Transmission

Brent C. Featherston
FEATHERSTON LAW FIRM, CHTD.
113 South Second Ave.
Sandpoint, ID 83864

Attorneys for the Plaintiff

- ☐ By Hand Delivery
☐ By U.S. Mail
☐ By Overnight Mail
☒ By Facsimile Transmission


Stephanie Allen

1 TOBY McLAUGHLIN, ISB No. 7405
2 JOSH HICKEY ISB No. 9409
3 Berg & McLaughlin, Chtd.
4 414 Church Street, Ste 203
5 Sandpoint, ID 83864
6 Telephone: (208)263-4748
7 Facsimile: (208)263-7557

8 *Attorneys for Defendants*

315 APR -6 A 10:22

CLERK DISTRICT COURT
DMH
DEPUTY

9 IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE
10 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

11 NO. CV-2013-1045

12 DOUGLAS VISSER, a married man as to his
13 sole and separate property,

14 Plaintiff,

15 vs.

16 AUTO ALLEY, LLC, an Idaho limited liability
17 company, CALVIN VISSER and VICKI
18 VISSER, as individuals in their capacity as
19 Members and/or Managers of Auto Alley, LLC,

20 Defendants.

ORDER TO VACATE AND RESET THE
PLAINTIFF'S HEARING ON A MOTION
FOR JUDGMENT OF QUIET TITLE AND
WRIT OF POSSESSION

&
ORDER TO VACATE AND
RESET DEFENDANTS'
HEARING ON A MOTION
FOR CONTEMPT

21 THIS MATTER, having come regularly before the above entitled court, and for good
22 cause appearing; *and the parties having stipulated;*

23 IT IS HEREBY ORDERED that the hearing for the Plaintiff's Motion for Judgment of
24 Quiet Title and Writ of Possession, currently scheduled to take place on April 10, 2015 at 1:30
25 p.m. is to be continued until May 20, 2015 at 1:30 a.m. (p.m.) in a courtroom in the
above-entitled court. *Defendants' Motion for Contempt, currently
scheduled for May 6, 2015 at 10:00am, is continued*

DATED this 6 day of Apr., 2015 until May 20, 2015 at 1:30pm.

Barbara Buchanan
Barbara Buchanan
District Judge

CLERK'S CERTIFICATE OF SERVICE

On ~~March~~ April 6, 2015, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Margaret Williams, Esq. P.O. Box 283 Ponderay, ID 83852 <i>Attorney for the Defendants</i>	<input type="checkbox"/> By Hand Delivery <input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input checked="" type="checkbox"/> <i>Courthouse mail</i>
Brent C. Featherston FEATHERSTON LAW FIRM, CHTD. 113 South Second Ave. Sandpoint, ID 83864 <i>Attorneys for the Plaintiff</i>	<input checked="" type="checkbox"/> By Hand Delivery <i>Plu draw</i> <input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input checked="" type="checkbox"/> By Facsimile Transmission <i>(208) 263-0400</i>
Toby McLaughlin Berg & McLaughlin, Chtd. 414 Church St., Ste. 203 Sandpoint, ID 83864 <i>Attorneys for the Defendants</i>	<input checked="" type="checkbox"/> By Hand Delivery <i>Plu draw</i> <input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input checked="" type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other <i>(208) 263-7557</i>

Stephanie H.
~~Stephanie Allen~~

ORIGINAL

FEATHERSTON LAW FIRM, CHTD.
BRENT C. FEATHERSTON, ISB NO. 4602
Attorney at Law
113 S. Second Avenue
Sandpoint, ID 83864
(208) 263-6866
(208) 263-0400 (Fax)
brent@featherstonlaw.com

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2015 APR 6 PM 3 33

CLERK OF DISTRICT COURT
[Signature]
DEPUTY

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man)
as to his sole and separate property,)

Plaintiff,)

vs.)

AUTO ALLEY, LLC, an Idaho)
limited liability company, CALVIN)
VISSER and VICKI VISSER, as)
individuals and in their capacity as)
Members and/or Managers of)
Auto Alley, LLC,)

Defendants.)

CASE NO. CV-2013-1045

**SECOND AMENDED
NOTICE OF HEARING**

[May 20, 2015, at 1:30 p.m.]

YOU ARE HEREBY NOTIFIED that the undersigned, as attorney for the above-named Plaintiff, will call for hearing before the Honorable Barbara Buchanan on the Plaintiff's Motion for Judgment of Quiet Title and Writ of Possession on May 20, 2015, at 1:30 p.m., or as soon thereafter as counsel may be heard.

DATED this 6 day of April, 2015.

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

113 S. Second Ave.
Sandpoint, ID 83864
Phone (208) 263-6866
Fax (208) 263-0400

*Licensed in Idaho & Washington

FEATHERSTON LAW FIRM, CHTD.

By. *[Signature]*

BRENT C. FEATHERSTON
Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on the 6th day of April, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person in the following manner:

D. Toby McLaughlin, Esq.
BERG & McLAUGHLIN, CHTD.
414 Church Street, Suite 203
Sandpoint, ID 83864

- ☐ U.S. Mail, Postage Prepaid
- ☐ Overnight Mail
- ☐ Hand delivered
- ☒ Facsimile No. (208) 263-7557
- ☐ Other: _____

By 

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

113 S. Second Ave.
Sandpoint, ID 83864
Phone (208) 263-6866
Fax (208) 263-0400

*Licensed in Idaho & Washington

SECOND AMENDED NOTICE OF HEARING- 2

247

1 TOBY McLAUGHLIN, ISB No. 7405
 2 Berg & McLaughlin, Chtd.
 3 414 Church Street, Ste 203
 4 Sandpoint, ID 83864
 Telephone: (208)263-4748
 Facsimile: (208)263-7557

5 *Attorneys for Defendants*

2015 MAY 13 P 4:54

CLERK DISTRICT COURT

DEPUTY

6
 7 IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

8 NO. CV-2013-1045

9 DOUGLAS VISSER, a married man as to his
 sole and separate property,

10 Plaintiff

11 vs.

DEFENDANTS' MEMORANDUM IN
 OPPOSITION TO PLAINTIFF'S MOTION
 JUDGMENT OF QUIET TITLE AND
 WRIT OF POSSESSION

12 AUTO ALLEY, LLC, an Idaho limited liability
 company, CALVIN VISSER and VICKI
 13 VISSER, as individuals in their capacity as
 Members and/or Managers of Auto Alley, LLC,

14 Defendant.
 15

16 SUMMARY OF ARGUMENT

17 On March 26, 2015, the Defendants filed a Motion for Contempt against the Plaintiff,
 18 alleging that Douglas Visser had breached the terms of the Judgment entered herein. The next
 19 day, on March 27, 2015, the Plaintiff, Douglas Visser, filed his Motion for Judgment of Quiet
 20 Title and Writ of Possession, in which he accuses the Defendants of having failed to complete
 21 their obligations under the Judgment.
 22

23 Plaintiff's Motion is barred by the doctrine of res Judicata. Furthermore, the Defendants
 24 have substantially complied with their obligations as set forth in the Judgment. Consequently,
 25 the Plaintiffs Motion must be denied.

ARGUMENT***A. The Plaintiff's Claim is Barred by the Doctrine of Res Judicata.***

In this matter, the Plaintiff alleges that he has been aggrieved by the Defendants' failure to abide by the terms of the settlement agreement and resulting stipulated judgment. The Plaintiff brought this same motion on April 3, 2014. After an evidentiary hearing, the Court issued a Judgment Re Writ of Possession and Quit Title on May 5, 2014, finding **"the Defendants have substantially complied with the Judgment entered February 19, 2014, and the Court declines to enter Quit Title Judgment and Writ of Possession."** (*Judgment Re Writ of Possession and Quit Title*, ¶ 2) (*emphasis added*). The Plaintiff, nevertheless, seeks the same remedies as were denied a year ago, and asserts that the Defendants have failed to substantially comply with the Judgment, despite the Court's prior Judgment on this same issue. These claims are barred by the doctrine of *res judicata*.

Under principles of claim preclusion, a valid final judgment rendered on the merits by a court of competent jurisdiction is an absolute bar to a subsequent action between the same parties upon the same claim. *Aldape v. Akins*, 105 Idaho 254, 256, 668 P.2d 130, 132 (Ct.App.1983); see *Diamond v. Farmers Group, Inc.*, 119 Idaho 146, 150, 804 P.2d 319, 323 (1990) (citing from *Joyce v. Murphy Land Co.*, 35 Idaho 549, 208 P. 241 (1922)). The three fundamental purposes served by *res judicata* are:

First, it "[preserves] the acceptability of judicial dispute resolution against the corrosive disrespect that would follow if the same matter were twice litigated to inconsistent results." Second, it serves the public interest in protecting the courts against the burdens of repetitious litigation; and third, it advances the private interest in repose from the harassment of repetitive claims.

Aldape, 105 Idaho at 257, 668 P.2d at 133 (citation omitted).

1 This court has already issued a Judgment finding that the Defendants have substantially
2 complied with the underlying Judgment. The Plaintiff has no right to relitigate that issue, as it is
3 attempting to do with its Motion. The Motion, therefore, must be denied.

4 **B. The Defendants Have Satisfied Their Obligations Under the Judgments.**

5 The obligations of the Defendants under both Judgments issued herein have been
6 satisfied. The Defendants have removed all of the vehicles and equipment from Lot 1. The
7 Defendants have paid approximately \$25,000 in back taxes on Lot 2. The Defendants have paid
8 approximately \$130,000 toward the mortgage owing on Lot 2. The Defendants provided a Phase
9 I Environmental Site Assessment, and have addressed the three issues set forth therein. The
10 Defendants have, therefore, substantially satisfied their obligations.

11 In his Motion, Plaintiff Douglas Visser points to the Court Judgment entered on May 5,
12 2014, and claims that the Judgment provides "among other things, that the Defendants' time for
13 vacating the premises was extended to April 30, 2014." This argument ignores and grossly
14 misconstrues the language of the Judgment. In fact, the Judgment requires that the Defendant
15 "vacate *Lot 1* as provided in the Court's Judgment entered February 19, 2014, by the end of the
16 day, April 30, 2014." (*Judgment Re Writ of Possession and Quit Title*, ¶ 5) (*emphasis added*).
17 The Defendants have, in fact, vacated Lot 1, as they have moved all of their equipment and
18 vehicles to Lot 2. The Defendants were under no obligation to vacate the entire "premises," as
19 the Plaintiff erroneously asserts in his motion.

20 The Plaintiff also asserts that the Defendants failed to pay their share of the mortgage
21 obligation to Joe Lapham. (*Judgment Re Writ of Possession and Quit Title*, p. 3). The
22 Defendants, however, have paid to Mr. Lapham approximately \$130,000, and had reached an
23 agreement with Mr. Lapham whereby he would refinance the Defendants' portion of the debt,
24
25

1 thereby satisfying this requirement. Prior to the completion of the loan paperwork, and without
2 notice to the Defendants, however, Plaintiff Douglas Visser paid off the debt to Mr. Lapham in
3 full, thereby satisfying both parties' obligation to do so. In the process, however, Mr. Visser
4 encumbered both Lot 1 and Lot 2, thereby preventing Mr. Visser from transferring Lot 2 to the
5 Defendants, as is his obligation under the Judgment. In any case, the obligation to Mr. Lapham
6 has been paid, and the judgment in this regard has been satisfied.

7
8 Mr. Visser also claims that "Defendants were required to construct their own access to
9 Lot 2 and have failed and/or refused to do so." (*Judgment Re Writ of Possession and Quit Title*,
10 p. 3). Neither of the Judgments issued in this case require the Defendants to construct any access
11 to Lot 2. The Plaintiff has no rights to impose additional requirements, or seek to evict the
12 Defendants on this basis.

13 Mr. Visser next contends that the Defendants' have failed to obtain a clean Phase I
14 environmental study. The Defendants submit that at no time were they under a requirement to
15 submit a 'clean' study to the Plaintiffs. Their obligation, as set forth in the original Judgment,
16 was to *obtain* an environmental study. In the May 5, 2014 order, the Court ordered the
17 Defendants to deliver to the Plaintiff an updated, revised, and corrected Phase I Environmental
18 Site Assessment which shall reflect that the assessment and/or report is prepared for the benefit
19 of the Plaintiff. The Defendants complied with this requirement. To the extent that the Plaintiff
20 alleges that the phrase, "among other things," includes an obligation to submit a 'clean'
21 environmental study, the Defendants submit that the language of this order is so ambiguous as to
22 be unenforceable. Nevertheless, the Defendants obtained the Phase I environmental study, and
23 have remedied the three issues identified therein, as required by the Judgment. They do not have
24 a report to this effect, but that is not required by either judgment.
25

1 Finally, the Plaintiff argues that the Defendant has damaged the Plaintiff's property and
2 failed to remedy the damage. The Plaintiff cannot prove these claims. There is no evidence of
3 the condition of the property as of August 15, 2013. Without such a baseline, or evidence
4 particularly describing the alleged damage and properly attributing the cause of such to the
5 Defendants, these allegations are simply conjecture. Furthermore, the Defendants have averred
6 that the damage complained of by the Plaintiff, which is not described in his motion or affidavit,
7 existed prior to August 15, 2013. Vicki Visser, on the other hand, states in her affidavit that the
8 damage was caused by prior tenants of the parties, and the Plaintiff had knowledge of that
9 damage.
10

11 CONCLUSION

12 The relief requested by the Plaintiff in its current Motion is exactly the same relief that
13 the Court previously denied. These issues are, therefore, barred by the doctrine of *res judicata*.
14 Moreover, the Plaintiff cannot meet its burden of proof as to its claim that the Defendants have
15 failed to meet their obligation under the Judgments. For these reasons, the Defendants
16 respectfully submit that the Plaintiff's motion must be denied.

17 DATED this 13th day of May, 2015.

18 BERG & McLAUGHLIN, CHTD.

19
20 By: 

21 Toby McLaughlin
22 Attorneys for the Defendant/Petitioner
23
24
25

CERTIFICATE OF SERVICE

On May 13, 2015, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Margaret Williams, Esq.
P.O. Box 283
Ponderay, ID 83852

☐ By Hand Delivery
☒ By U.S. Mail
☐ By Overnight Mail
☐ By Facsimile Transmission

Attorney for the Defendants

Brent C. Featherston
FEATHERSTON LAW FIRM, CHTD.
113 South Second Ave.
Sandpoint, ID 83864

☐ By Hand Delivery
☐ By U.S. Mail
☐ By Overnight Mail
☒ By Facsimile Transmission

Attorneys for the Plaintiff/Respondent

Stephanie Allen

TOBY McLAUGHLIN, ISB No. 7405
Berg & McLaughlin, Chtd.
414 Church Street, Ste 203
Sandpoint, ID 83864
Telephone: (208)263-4748
Facsimile: (208)263-7557

Attorneys for Defendants

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2015 MAY 13 PM 4 37

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

NO. CV-2013-1045

DOUGLAS VISSER, a married man as to his
sole and separate property,

Plaintiff

vs.

AUTO ALLEY, LLC, an Idaho limited liability
company, CALVIN VISSER and VICKI
VISSER, as individuals in their capacity as
Members and/or Managers of Auto Alley, LLC,

Defendant.

AFFIDAVIT OF JOE LAPHAM IN
RESPONSE TO PLAINTIFF'S MOTION
TO QUIET TITLE

STATE OF IDAHO)
) ss.
County of Bonner)

JOE LAPHAM, being first duly sworn upon oath, deposes and says:

1. That I am over the age of eighteen and am competent to testify to the facts set forth herein.

2. That I have personal knowledge of the facts set forth herein.

3. The parties to this action borrowed money from me approximately eight years ago in order to finance their business operations.

4. After the parties divorced, I learned that each party would be responsible for half of their debt to me.

AFFIDAVIT OF VICKI VISSER IN RESPONSE TO
PLAINTIFF'S MOTION TO QUIET TITLE- 1

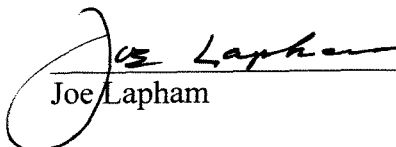
1 5. The Defendant paid me \$130,000 towards her half of the debt. This left her with
2 an approximate balance of \$30,000.

3 6. I agreed to loan the Defendant approximately \$40,000. It was our intent that
4 \$30,000 would be used to pay off the remainder of the debt owed to me so that she could comply
5 with the terms of her settlement agreement. The additional \$10,000 was to be used for
6 improvements to the property.

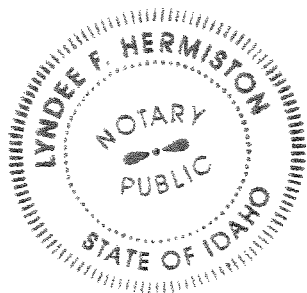
7 7. Before the Defendant and I could finalize our agreement, the Plaintiff paid the
8 entire balance of the loan.

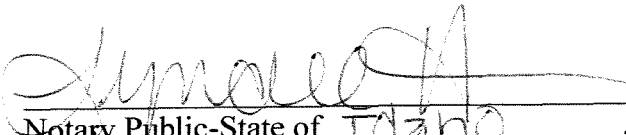
9 8. The Defendant does not currently owe a balance to me on this, or any other, debt.
10

11
12 DATED this 13 day of May, 2015.

13
14 
Joe Lapham

15
16 SUBSCRIBED AND SWORN to before me this 13 day of May, 2015.




Notary Public-State of Idaho
Residing at Sandpoint
My commission expires: Dec 5 2020

CERTIFICATE OF SERVICE

On May 13, 2015, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Margaret Williams, Esq.
P.O. Box 283
Ponderay, ID 83852

Attorney for the Defendants

☐ By Hand Delivery
☒ By U.S. Mail
☐ By Overnight Mail
☐ By Facsimile Transmission

Brent C. Featherston
FEATHERSTON LAW FIRM, CHTD.
113 South Second Ave.
Sandpoint, ID 83864

Attorneys for the Respondent

☐ By Hand Delivery
☐ By U.S. Mail
☐ By Overnight Mail
☒ By Facsimile Transmission


Stephanie Allen

2015 MAY 13 PM 4 37

CLEARANCE
[Signature]

TOBY McLAUGHLIN, ISB No. 7405
Berg & McLaughlin, Chtd.
414 Church Street, Ste 203
Sandpoint, ID 83864
Telephone: (208)263-4748
Facsimile: (208)263-7557

Attorneys for Defendants

IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

NO. CV-2013-1045

DOUGLAS VISSER, a married man as to his
sole and separate property,

Plaintiff

vs.

AUTO ALLEY, LLC, an Idaho limited liability
company, CALVIN VISSER and VICKI
VISSER, as individuals in their capacity as
Members and/or Managers of Auto Alley, LLC,

Defendant.

AFFIDAVIT OF VICKI VISSER IN
RESPONSE TO PLAINTIFF'S MOTION
TO QUIET TITLE

STATE OF IDAHO)
County of Bonner) ss.

VICKI VISSER, being first duly sworn upon oath, deposes and says:

1. That I am a Defendant in the above-entitled proceeding and have personal
knowledge of the facts set forth herein.

2. That I am over the age of eighteen and am competent to testify to the facts set
forth herein.

3. My attorney, Margaret Williams, forwarded me a copy of Plaintiff's May 28,
2014 letter. The letter indicated that the Plat had not been approved at that time. A true and
correct copy of that letter is attached hereto as **Exhibit A**.

AFFIDAVIT OF VICKI VISSER IN RESPONSE TO
PLAINTIFF'S MOTION TO QUIET TITLE- 1

1 4. As I was ordered to do in the Court's May 5, 2014 order, I obtained an updated,
2 revised, and corrected Phase I Environmental Site Assessment through Allwest Testing and
3 Engineering and delivered it to Plaintiff's counsel before May 15, 2014. The report reflected,
4 among other things, that the assessment/report was prepared for the benefit of the Plaintiff, and
5 constituted a full and complete Phase I Assessment of Lot 1.

6 5. The report identified stained soil, stained surfaces, and surface water bodies. I
7 personally cleaned the stained soil and surfaces. I hired Kootenai Excavators, Inc. to grade and
8 level the entirety of Lot 1 in order to remove the mud-ruts and puddles on the property. I have
9 attached a true and correct copy of the invoice for that service hereto as **Exhibit B**.

10 6. I paid \$5,000 in rent to the Plaintiff, as ordered in the Court's May 5, 2014
11 Judgment.

12 7. I paid the Plaintiff's attorney fees, as ordered in the Court's May 5, 2014
13 Judgment.

14 8. I absolutely and fully vacated Lot 1 as provided in the Court's May 5, 2014 order,
15 at a cost of over \$12,000.

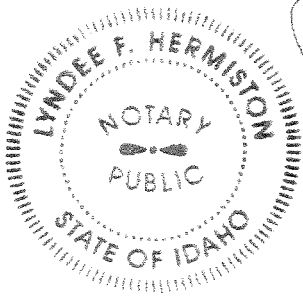
16 9. The road grading, as evidenced in **Exhibit B** took place between July 17, 2014
17 and July 25, 2014. This occurred after I vacated Lot 1.

18 10. The damage to the Plaintiff's property and buildings existed prior to August 15,
19 2013. The Plaintiff is aware of the fact that the damage was caused by tenants of ours who
20 backed into the warehouse and damaged the siding. The Plaintiff and I discovered this damage
21 at the same time, prior to August 15, 2013.
22
23
24
25

1 DATED this 13 day of May, 2015.

2 Vicki Visser
3 Vicki Visser

4
5 SUBSCRIBED AND SWORN to before me this 13 day of May, 2015.



Lyndee F. Hermiston
Notary Public-State of Idaho
Residing at Sandpoint
My commission expires: Dec 15 2020

CERTIFICATE OF SERVICE

On May 13, 2015, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Margaret Williams, Esq.
P.O. Box 283
Ponderay, ID 83852

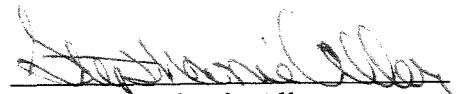
Attorney for the Defendants

☐ By Hand Delivery
☒ By U.S. Mail
☐ By Overnight Mail
☐ By Facsimile Transmission

Brent C. Featherston
FEATHERSTON LAW FIRM, CHTD.
113 South Second Ave.
Sandpoint, ID 83864

Attorneys for the Respondent

☐ By Hand Delivery
☐ By U.S. Mail
☐ By Overnight Mail
☒ By Facsimile Transmission


Stephanie Allen

Featherston Law Firm Chtd.

Daniel P. Featherston
Brent C. Featherston
Jeremy P. Featherston

Attorneys at Law

May 28, 2014

Margaret Williams, Esq.
P.O. Box 283
Ponderay, ID 83852

Re: Visser v. Auto Alley, LLC, et al.

Dear Margaret:

In regard to several matters that came up during the course of the hearing I am providing herein the following information:

1. The reason the final Plat has not been approved for subdivision of the property is that your clients failed to make full payment of the outstanding taxes back in January of this year. Enclosed you will find a print-out from the County Assessor's office indicating that Vicki Visser made a payment of \$8,692.88 by check on January 27th of this year, however the full assessment for 2013 amounts to \$9,692.88 leaving a balance due of \$1,000.00. The delay in finalizing and recording the Mylar and Plat is at this point solely based upon the unpaid taxes, which are your client's obligation. Please address this with your client immediately.

2. Regarding the issue of your client building a road to Lot 2, Vicki testified that she had contacted Larry Fairfax. Please provide this office with copies of any estimate, plan, specifications or proposals for construction of the road across Lot 1. I would appreciate also receiving in that information Mr. Fairfax's contractor registration number and confirmation that he is in fact a registered contractor with the Idaho Bureau of Occupational Licensing. It is imperative that we have confirmation of his qualifications, registration and that he possesses liability insurance before he will be permitted to work on the premises.

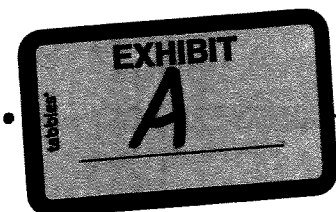
3. Once we have confirmation of Mr. Fairfax's qualifications, state licensing and insurance we will need your client to provide a time schedule when the work will be performed.

4. As indicated at hearing on Wednesday, you said the loan documents had been signed by your client (when I am not sure) and provided to either the escrow company or Mr. Lapham. This is puzzling since my last correspondence to you and Rex Finney on February 27th enclosed those documents and designated them as "drafts". I had asked that we have input on the draft documents from both you and Mr. Finney, and obviously they would then need to be signed by my client before submitting to the escrow company. Please provide me with the loan documentation signed by you and/or your client, at your earliest possible convenience.

I have asked my client to briefly hold off on placing a permanent barricade across the existing trail in expectation that your client will move immediately forward with the construction of an approved road. Please provide me with proof that they have paid the remaining taxes as required so that the Plat can be finalized.

* Licensed Idaho & Washington

113 S. Second Avenue • Sandpoint, Idaho 83864 • (208) 263-6866 •



Margaret Williams

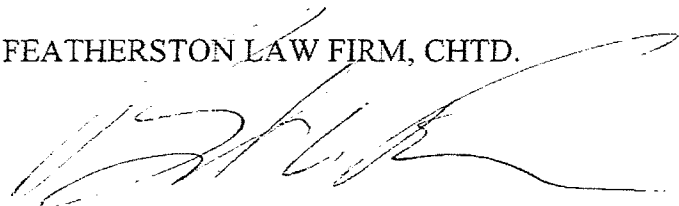
May 28, 2014

P 2

Thank you for your attention to this matter.

Sincerely,

FEATHERSTON LAW FIRM, CHTD.



BRENT C. FEATHERSTON
Attorney at Law

BCF/aj
Enclosures(1)
cc: Client

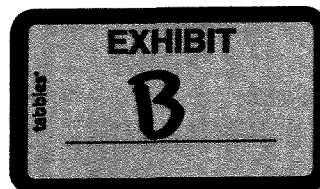
Kootenai Excavators, Inc.
31656 Hwy 200 E Suite A
Ponderay, ID 83852
(208) 265-9404

Invoice

Date	Invoice #
7/25/2014	7508

Bill To
Auto Alley 31592 Hwy 200 Ponderay, ID 83852

Description	Hours	Rate	Date	Amount
Clean property: Grade field and main road				
Grade field - 650	5	95.00	7/17/2014	475.00
Grade field- 650	4.5	95.00	7/18/2014	427.50
Grade field- 650	5.5	95.00	7/21/2014	522.50
Labor	0.5	35.00	7/21/2014	17.50
Loader	2.25	95.00	7/22/2014	213.75
EX58-field	1.5	95.00	7/22/2014	142.50
Grade field- 650	4	95.00	7/22/2014	380.00
Grade field- 650	3.25	95.00	7/23/2014	308.75
Loader	2.5	95.00	7/23/2014	237.50
Grade main road -650	1	95.00	7/24/2014	95.00
Labor	0.25	35.00	7/24/2014	8.75
Credit (tires)	-1	100.00		-100.00
Grade field- 650	1	95.00	7/25/2014	95.00
Labor	0.5	35.00	7/25/2014	17.50
650 - Vicki's own property - Start grading road	2.5	95.00	7/25/2014	237.50
Total				\$3,078.75
Payments/Credits				\$0.00
Balance Due				\$3,078.75



ORIGINAL

FEATHERSTON LAW FIRM, CHTD.

BRENT C. FEATHERSTON, ISB# 4602

Attorney at Law

113 S. Second Avenue

Sandpoint, ID 83864

(208) 263-6866

(208) 263-0400 (Fax)

brent@featherstonlaw.com

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man)
as to his sole and separate property,)

Plaintiff,)

vs.)

AUTO ALLEY, LLC, an Idaho)
limited liability company, CALVIN)
VISSER and VICKI VISSER, as)
individuals and in their capacity as)
Members and/or Managers of)
Auto Alley, LLC,)

Defendants.)

CASE NO. CV-2013-1045

**AFFIDAVIT OF COUNSEL
IN SUPPORT OF PLAINTIFF'S
MOTION FOR WRIT OF POSSESSION
AND JUDGMENT OF QUIET TITLE**

STATE OF IDAHO)

) ss:

County of Bonner)

I, BRENT C. FEATHERSTON, being first duly sworn upon oath, depose and state
as follows:

I am over the age of 18 and competent to testify to the matters contained herein.

I am counsel for the Plaintiff in the above-entitled matter.

**AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S REPLY MEMORANDUM IN
SUPPORT OF MOTION JUDGMENT OF QUIET TITLE AND WRIT OF POSSESSION AND
IN SUPPORT OF MOTION TO DISMISS DEFENDANTS' MOTION FOR CONTEMPT - 1**

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

113 S. Second Ave.
Sandpoint, ID 83864
Phone (208) 263-6866
Fax (208) 263-0400

*Licensed in Idaho & Washington

1. Attached hereto and incorporated herein by reference as Exhibit "A" is a true and accurate copy of the Notice of Default dated August 14, 2013, signed by Joseph G. Lapham.

2. Attached hereto and incorporated herein by reference as Exhibit "B" is a true and accurate copy of the Amendment, Modification, and/or Correction of Deed of Trust dated August 14, 2013, signed by Douglas L. Visser, Vicki L. Visser and Joseph G. Lapham.

3. Attached hereto and incorporated herein by reference as Exhibit "C" is a true and accurate copy of correspondence dated July 3, 2014, from attorney Rex A. Finney.

4. Attached hereto and incorporated herein by reference as Exhibit "D" is a true and accurate copy of correspondence dated August 29, 2014, from Rex A. Finney.

5. On November 14, 2014, I received a telephone call from Rex Finney inquiring if I was authorized to accept service on Mr. Visser's behalf for a foreclosure. I conveyed this information to my client. I inquired of the Defendants' counsel, Margaret Williams, as to the status of their payoff and was informed that she did not know what progress her clients had made with regarding paying off the Note. I then communicated to Mr. Finney that I was not authorized to accept service on a foreclosure proceeding.

Further, your Affiant sayeth naught.

DATED this 18 day of May, 2015.



BRENT C. FEATHERSTON

ATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

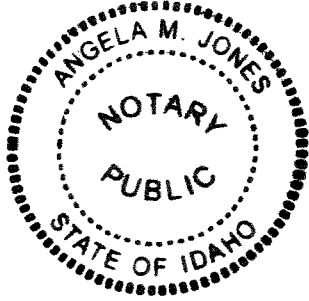
Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

113 S. Second Ave.
Sandpoint, ID 83864
Phone (208) 263-6866
Fax (208) 263-0400

*Licensed in Idaho & Washington

**AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S REPLY MEMORANDUM IN
SUPPORT OF MOTION JUDGMENT OF QUIET TITLE AND WRIT OF POSSESSION AND
IN SUPPORT OF MOTION TO DISMISS DEFENDANTS' MOTION FOR CONTEMPT - 2**

SUBSCRIBED AND SWORN to before me, a Notary Public, on this 18 day of May, 2015, by Brent C. Featherston.



Angela M. Jones
Notary Public - State of Idaho
Residing at Bennett Ferry
Commission expires: 3-13-2020

CERTIFICATE OF MAILING

I hereby certify that on the 18 day of May, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person in the following manner:

D. Toby McLaughlin, Esq.
BERG & McLAUGHLIN, CHTD.
414 Church Street, Suite 203
Sandpoint, ID 83864

- ☐ U.S. Mail, Postage Prepaid
- ☐ Overnight Mail
- ☐ Hand delivered
- ☒ Facsimile No. (208) 263-7557
- ☐ Other: _____

Margaret Williams, Esq.
P.O. Box 283
Ponderay, ID 83852

- ☐ U.S. Mail, Postage Prepaid
- ☐ Overnight Mail
- ☐ Hand delivered
- ☒ Facsimile No. (888) 336-6064
- ☐ Other: _____

By 

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

113 S. Second Ave.
Sandpoint, ID 83864
Phone (208) 263-6866
Fax (208) 263-0400

AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S REPLY MEMORANDUM IN
SUPPORT OF MOTION JUDGMENT OF QUIET TITLE AND WRIT OF POSSESSION AND
IN SUPPORT OF MOTION TO DISMISS DEFENDANTS' MOTION FOR CONTEMPT - 3

*Licensed in Idaho & Washington

NOTICE OF DEFAULT

RE: ACCOUNT #2056920

TO: DOUGLAS L VISSER
VICKI L VISSER
31564 HWY 200
PONDERAY ID 83852

FROM: JOSEPH G LAPHAM
401K PLAN
1229 W ODEN BAY RD
SANDPOINT ID 83864

Please refer to that Deed of Trust dated September 2, 2005, between Douglas L. Visser and Vickie L. Visser, husband and wife, therein called GRANTOR, in the amount of \$111,500.00 recorded as Instrument #686168 records of Bonner County, Idaho on 09/02/05; Joseph G. Lapham 401(k) plan, therein called BENEFICIARY, and First American Title Company, therein called TRUSTEE.

Notice is hereby provided that you are in default under said Deed of Trust in that the following payments have not been made:

PAYMENT DUE DATE	AMOUNT
November 2012 shortage	\$ 566.00
December 2012 - August 2013 Payments	\$20,007.00
December 2012 - July 2013 Late Charges	\$ 800.00

The amount due to cure said default is \$21,373.00 for delinquent payments and \$100.00 default fee for a total amount of \$21,473.00. All payments that shall come due within the default period will also be due upon curing said default.

Payment must be mailed or hand-delivered to Panhandle Escrow Company, P. O. Box 1027, 113 N Second Avenue, Sandpoint, Idaho 83864 or 320 E. Neider Ave., Ste. 201, Coeur d'Alene ID 83815 in the form of cash or cashier's check.

Full cure is due thirty (30) days from the date of mailing this default notice. If this default is not cured within the time given, the account will be closed and the documents will be delivered to the beneficiaries for foreclosure proceedings.

DATED 8-14-2013

Joseph G. Lapham
JOSEPH G LAPHAM 401(K) PLAN

Return To:
Panhandle Escrow Company, Inc.
P.O. Box 1027
Sandpoint, Idaho 83864
Panhandle Escrow # 2056920

AMENDMENT, MODIFICATION, AND/OR CORRECTION OF DEED OF TRUST

THIS AGREEMENT is made and entered into this 17th day of November, 2011, by and between, DOUGLAS L. VISSER and VICKI L. VISSER, husband and wife, whose address is 31564 Highway 200, Sandpoint, Idaho, 83864, as "Grantors", and JOSEPH G. LAPHAM (401) K PLAN, whose address is 1229 West Oden Bay Road, Sandpoint, Idaho 83864, as "Beneficiary" (By Assignment), to amend, modify, and/or correct a Deed of Trust dated September 2, 2005, and recorded as Instrument Number 686168 records of **Bonner County, Idaho**, by which Grantors conveyed the real and/or personal property therein described to secure payment to Beneficiary of a Promissory Note of even date therein identified and also such other sums and/or the performance of such other obligations as provided in said Deed of Trust which this reference is incorporated herein for all necessary and proper purchases.

Both Grantor and Beneficiary now desire and so hereby amend, modify, supplement and/or correct the original Deed of Trust in the following respect:

The total amount now secured by said Deed of Trust is \$246,5000.00 (\$TWO HUNDRED FORTY SIX THOUSAND FIVE HUNDRED AND NO 100 /DOLLARS). The final payment is due October 12, 2014. All other terms and conditions set forth in the above Deed of Trust shall remain unchanged.

The identified original Deed of Trust is hereby amended, modified, supplemented and/or corrected and shall continue in full force and effect.

The Grantors hereby represent and covenant that there are no judgments, liens or further encumbrances affecting the said real properties secured by the above mentioned Deed of Trust. This Amendment supercedes a previous Amendment signed by the Grantors and the Beneficiary March 28, 2008.

GRANTORS:

Douglas L. Visser
DOUGLAS L. VISSER

Aug. 14, 2013
Date: ~~November 17, 2011~~

Vicki L. Visser
VICKI L. VISSER

August 14, 2013
Date: ~~November 17, 2011~~

BENEFICIARY:

Joseph G. Lapham
JOSEPH G. LAPHAM 401(K) PLAN

Aug. 14, 2013
Date: ~~November 17, 2011~~

FINNEY FINNEY & FINNEY, P.A.

ATTORNEYS AT LAW

OLD POWER HOUSE BUILDING

120 EAST LAKE STREET, SUITE 317

SANDPOINT, IDAHO 83864

PHONE: 1-208-263-7712 FAX: 1-208-263-8211

Gary A. Finney / John A. Finney / Rex A. Finney

July 3, 2014

Panhandle Escrow Company
113 North Second Avenue
Sandpoint, Idaho 83864

VIA HAND DELIVERY

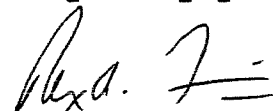
Re: Lapham/Visser
Escrow No. 2056920
Our File No. 4735-31

Dear Panhandle Escrow:

Enclosed regarding the above referenced escrow, please find the original Amendment, Modification and/or Correction of Deed of Trust and Promissory Note recorded July 2, 2014 as Instrument No. 861327 for placement in the above referenced escrow. Also enclosed is Finney Finney & Finney, P.A. Check No. 20321 in the amount of \$50.00 for the modification fee.

Thank you. If you have any questions or concerns, please call.

Very truly yours,



REX A. FINNEY
Attorney at Law

RAF:cme
Enclosures

cc: Joe Lapham (w/enc)
Atty Brent Featherston (w/enc)
Margaret Williams (w/enc)

AFTER RECORDING, RETURN TO:

FOR RECORDER'S USE ONLY:

Panhandle Escrow Company
 PEC File No. 2056920
 P.O. Box 1027
 Sandpoint, ID 83864

AMENDMENT, MODIFICATION AND/OR CORRECTION OF DEED OF TRUST AND PROMISSORY NOTE

This Agreement is made and entered into this ____ day of December, 2013, by and between Douglas L. Visser, c/o Brent C. Featherston, Featherston Law Firm, Chtd., 113 S. Second Avenue, Sandpoint, Idaho 83864, and Vicki L. Visser and Calvin Visser and Auto Alley, LLC, an Idaho limited liability company, c/o Margaret Williams P.O. Box 283, Ponderay, ID 83852, as Grantors/Obligators and Joseph G. Lapham (401K Plan), whose address is 1229 West Oden Bay Road, Sandpoint, Idaho 83864, c/o Rex A. Finney, Finney & Finney, P.A., 120 East Lake Street, Suite 317, Sandpoint, Idaho 83864-1366, as Beneficiary, to amend, modify and/or correct the Deed of Trust and/or Promissory Note dated on or about September 2, 2005, and as recorded as Instrument No. 686168 in the records of Bonner County, Idaho, by which Grantors conveyed that real and/or personal property described therein to secure payment to the beneficiary of a Promissory Note of same date therein identified, and also such other sums and/or performance of such other obligations as provided for in said Deed of Trust, by which this reference is incorporated herein for all necessary and proper purposes.

Both Grantor and Beneficiary now desire to do so hereby amend, modify, supplement and/or correct the original Promissory Note and/or Deed of Trust in the following respects:

1. The total current balance \$291,346.64 shall be increased by six percent (6%) which shall be added as principal, thereby increasing the principal balance to \$308,827.44, as

OF February 13, 2014.

JGL
 VLV
 CJV
 BJI

AMENDMENT, MODIFICATION AND/OR CORRECTION
 OF DEED OF TRUST AND PROMISSORY NOTE - 1

Instrument # 861327

BONNER COUNTY, SANDPOINT, IDAHO
 7-2-2014 03:50:35 No. of Pages: 5

Recorded for : FINNEY

R. ANN DUTSON-SATER Fee: 22.00

Ex-Officio Recorder Deputy CG
 Index to: REAL ESTATE DEED OF TRUST

FEATHERSTON LAW FIRM, CHTD.
 ATTORNEYS AT LAW

Daniel P. Featherston
 Brent C. Featherston*
 Jeremy P. Featherston
 Jeremi L. Ossman

113 S. Second Ave.
 Sandpoint, ID 83864
 Phone (208) 263-6866
 Fax (208) 263-0400

*Licensed in Idaho & Washington

2. A principal payment of \$5,000.00 made on or about October 15th, 2013m shall be paid as consideration for this modification, receipt of which is hereby acknowledged as having been paid by Douglas L. Visser on or about October 15, 2013.

3. Upon compliance and performance of all terms and conditions in the Mediated Settlement Agreement and District Court Judgment attached hereto as Exhibits "A" and "B" and upon completion of the subdivision process in a timely manner no later than June 30, 2014, and upon Lapham receiving fifty percent (50%) of the loan balance as provided in said Judgment and Mediated Settlement Agreement, Lapham shall agree that any collection or foreclosure proceedings will be pursued for collection first against Lot 1 and only against Lot 2 in the event that Lot 1 shall fail to fully satisfy the remaining obligation to Lapham. Lot 1 and Lot 2 are designated or depicted on Exhibit "B" to the Judgment attached hereto.

4. It is further agreed that all automobiles, vehicles, automotive parts and personal property of Vicki Visser, Calvin Visser and Auto Alley, LLC, which currently exists upon the real property shall be security for this obligation with said parties to execute a Security Agreement and UCC-1 Financing Statement. Said Security Agreement and UCC-1 Financing Statement shall be released by Lapham upon payment of one-half (1/2) of the total obligation as set forth in the Judgment and Mediated Settlement Agreement.

5. Should the parties comply with and perform upon the obligations set forth herein, and pursuant to the Judgment, Joseph Lapham shall not proceed with any default or further collection, foreclosure, or repossession proceeding on the Note and Deed of Trust.

6. All remaining terms and conditions of the original Note and Deed of Trust shall remain in full force and effect unless expressly modified herein. To the extent this

AMENDMENT, MODIFICATION AND/OR CORRECTION
OF DEED OF TRUST AND PROMISSORY NOTE - 2



Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

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Amendment modifies or contradicts any prior agreements, this Amendment shall supersede said prior agreement. Final payment shall be due on or before October 12, 2014.

DATED this _____ day of December, 2013.

GRANTORS/OBLIGATORS:**BENEFICIARY:**

By Douglas L. Visser
DOUGLAS L. VISSER

JOSEPH G. LAPHAM 401K PLAN

By Vicki L. Visser
VICKI VISSER

By Joseph G. Lapham
JOSEPH G. LAPHAM

By Calvin Visser
CALVIN VISSER

AUTO ALLEY, LLC

By Calvin Visser MEMBER
CALVIN VISSER, Manager/Member



Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

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AMENDMENT, MODIFICATION AND/OR CORRECTION
OF DEED OF TRUST AND PROMISSORY NOTE - 3

STATE OF IDAHO)

) ss:

County of Bonner)

On this 8th day of July, ²⁰¹⁴~~2013~~, before me, the undersigned Notary Public, personally appeared **DOUGLAS L. VISSER** known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.



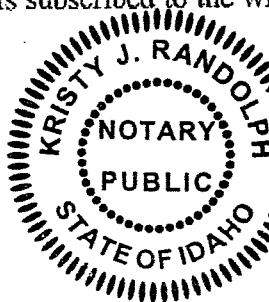
Kim Featherston
 Notary Public for the State of Idaho
 Residing at: Sandpoint, ID
 My Commission Expires: 9/30/19

STATE OF IDAHO)

) ss:

County of Bonner)

On this 7th day of May, ²⁰¹⁴~~2013~~, before me, the undersigned Notary Public, personally appeared **VICKI L. VISSER** known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.



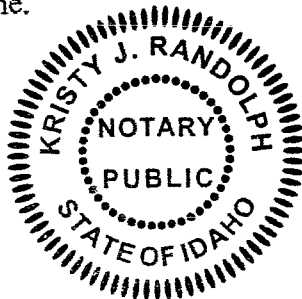
Kristy J. Randolph
 Notary Public for the State of Idaho
 Residing at: Sandpoint Idaho
 My Commission Expires: April 04, 2017

STATE OF IDAHO)

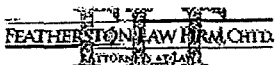
) ss:

County of Bonner)

On this 7th day of May, ²⁰¹⁴~~2013~~, before me, the undersigned Notary Public, personally appeared **CALVIN VISSER** known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.



Kristy J. Randolph
 Notary Public for the State of Idaho
 Residing at: Sandpoint Idaho
 My Commission Expires: April 04, 2017



Daniel P. Featherston
 Brent C. Featherston*
 Jeremy P. Featherston
 Jeremi L. Ossman

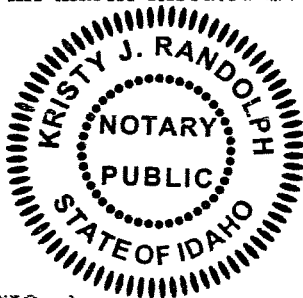
113 S. Second Ave.
 Sandpoint, ID 83864
 Phone (208) 263-6866
 Fax (208) 263-0400

*Licensed in Idaho & Washington

AMENDMENT, MODIFICATION AND/OR CORRECTION
 OF DEED OF TRUST AND PROMISSORY NOTE - 4

STATE OF IDAHO)
) ss:
 County of Bonner)

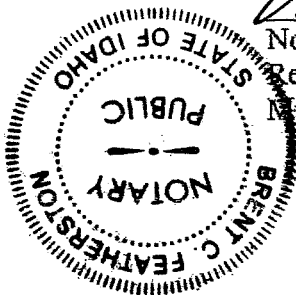
On this 7th day of May, ²⁰¹⁴~~2013~~, before me, the undersigned Notary Public, personally appeared, **CALVIN VISSER**, known or identified to me to be the person, (or proved to me by or on oath) to be the Manager/Member of **Auto Alley, LLC**, a limited liability company, whose name is subscribed to the within instrument, and acknowledged to me that he executed the same as Manager/Member of said limited liability company.



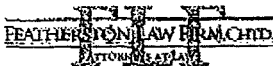
Kristy J. Randolph
 Notary Public for the State of Idaho
 Residing at: Sandpoint, Idaho
 My Commission Expires: April 04, 2017

STATE OF IDAHO)
) ss:
 County of Bonner)

On this 18 day of June, ²⁰¹⁴~~2013~~, before me, the undersigned Notary Public, personally appeared **JOSEPH G. LAPHAM** known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.



Brent C. Featherston
 Notary Public for the State of Idaho
 Residing at: Sandpoint, ID
 My Commission Expires: 1-28-2017



Daniel P. Featherston
 Brent C. Featherston*
 Jeremy P. Featherston
 Jeremi L. Ossman

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 Sandpoint, ID 83864
 Phone (208) 263-6866
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AMENDMENT, MODIFICATION AND/OR CORRECTION
 OF DEED OF TRUST AND PROMISSORY NOTE - 5

FINNEY FINNEY & FINNEY, P.A.

ATTORNEYS AT LAW
OLD POWER HOUSE BUILDING
120 EAST LAKE STREET, SUITE 317
SANDPOINT, IDAHO 83864-1366
PHONE: 1-208-263-7712 FAX: 1-208-263-8211
Gary A. Finney / John A. Finney / Rex A. Finney

August 29, 2014

Brent C. Featherston
113 S. Second Avenue
Sandpoint, ID 83864
VIA FACSIMILE: 263-0400
Total Pages: 1

Re: Lapham / Visser
Panhandle Escrow Acct. #2056920
Our File No. 4735-31

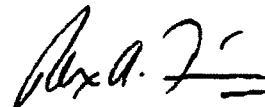
Dear Brent:

I have reviewed your August 27, 2014 fax.

My client declines your proposal and expects to be paid in full on or before the due date coming up in October 2014.

Thank you.

Very truly yours,



REX A. FINNEY
Attorney at Law

RAF:gmw

ORIGINAL

FEATHERSTON LAW FIRM, CHTD.
BRENT C. FEATHERSTON, ISB NO. 4602
Attorney at Law
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Sandpoint, ID 83864
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(208) 263-0400 (Fax)
brent@featherstonlaw.com

2015 MAY 18 PM 4 44

CLERK OF DISTRICT COURT

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man)
as to his sole and separate property,)

Plaintiff,)

vs.)

AUTO ALLEY, LLC, an Idaho)
limited liability company, CALVIN)
VISSER and VICKI VISSER, as)
individuals and in their capacity as)
Members and/or Managers of)
Auto Alley, LLC,)

Defendants.)

CASE NO. CV-2013-1045

**PLAINTIFF'S REPLY MEMORANDUM IN
SUPPORT OF MOTION FOR JUDGMENT
OF QUIET TITLE AND WRIT OF
POSSESSION AND IN SUPPORT OF
MOTION TO DISMISS DEFENDANTS'
MOTION FOR CONTEMPT**

COMES NOW the undersigned counsel for and on behalf of the Plaintiff, Douglas Visser, by and through his attorney of record, Brent C. Featherston, Featherston Law Firm, Chtd., and hereby submits the following Reply Memorandum in Support of Motion for Judgment of Quiet Title and Writ of Possession and in Support of Motion to Dismiss Defendants' Motion for Contempt as follows:

I. STATEMENT OF FACTS

The history of this case is significant and Plaintiff will not reiterate all of the facts indicating the Defendants' failure to comply, but it is summarized as follows:

**PLAINTIFF'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT OF QUIET TITLE AND WRIT OF
POSSESSION AND IN SUPPORT OF MOTION TO DISMISS DEFENDANTS' MOTION FOR CONTEMPT - I**

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

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Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

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This action was filed as a Complaint for breach of contract, waste of the premises, unlawful detainer and writ of possession, filed June 25, 2013. Following a hearing on Plaintiff's Application for Prejudgment Attachment and Order to Show Cause, the parties agreed to early mediation.

Mediation was successfully conducted August 15, 2013, leading to a Mediated Settlement Agreement. The Mediated Settlement Agreement called for Defendants to comply with certain deadlines and make certain payment. The Mediated Settlement Agreement is of record as an attachment to the Affidavit of Counsel in Support of Plaintiff's [First] Motion for Writ of Possession and Judgment of Quiet Title, filed April 3, 2014.

The Mediated Settlement Agreement expressly conditions Defendants' right to Lot 2 upon full and complete compliance with all terms and conditions of the settlement, including division and payment of one half (1/2) of the note to the creditor, Joe Lapham, estimated at mediation to be \$318,000.00.

Upon returning from mediation, Plaintiff was provided by Defendants with a notice of Default received from Mr. Lapham. Further, Mr. Lapham would not release any of the property from his obligation. Mr. Lapham never withdrew the Notice of Default for non payment. The Note and Deed of Trust had a due date of October 12, 2014. Through counsel, Rex Finney, Mr. Lapham threatened to proceed with foreclosure in August and November, 2014.

The remaining procedural history of this case is well documented through prior proceedings. After much effort on Plaintiff's counsel's part, the Court did finally enter a Judgment on February 19, 2014, which memorialized the terms of the Mediated Settlement Agreement except as modified due to Mr. Lapham's unwillingness to release either Lot 1 of or

Lot 2 and to reflect an extension of the deadline for Defendants to pay outstanding taxes. See Judgment, ¶¶ 4, 5, and 6.

As reflected in prior court proceedings, Defendants did not make the March 31, 2014, deadline to vacate the premises. The Affidavit of Douglas filed April 3, 2014, reflects that the Defendants had largely ignored that deadline and had not even seriously begun the process of moving out by April 3rd. The Court entered the Judgment Re Writ of Possession and Quiet Title on May 5, 2014, making the following findings:

“1. That Douglas Visser has been patient in regard to the Defendants’ compliance with the Mediated Settlement Agreement and subsequent Judgment entered by this Court.

2. That as of the hearing date April 23, 2014, the Court finds that the Defendants have substantially complied with the Judgment.....

3. That because it appears from the evidence that the Defendants’ compliance as of the date of this hearing is, *in significant part, due to the Plaintiff’s Motion* for Writ of Possession and Quiet Title” the Court further entered Judgment for fees, costs and rental of \$5,000.00 with the order that Defendants fully vacate Lot 1 by April 30, 2014.¹

The Judgment and Mediated Settlement Agreement are clear that Ms. Visser receives Lot 1 only upon condition that the Defendants have “fully and completely performed all of the obligations as set forth herein”. See Judgment, p.2

Defendants paid the \$5,000 rent for April and attorneys fees as awarded. The rent of

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1. This is, in fact, not the first instance of Defendants’ failure to comply with Deadlines. The February 19th Judgment reflects that contrary to the Mediated Settlement Agreement, which required all current delinquent taxes to be paid by December 31, 2013, they were, in fact, not paid. (Judgment ¶2) and upon vacating the premises, Ms. Visser was to obtain a Phase I Environmental Study, which was not done until April 15th and then slightly modified to add Mr. Visser as a party for whom the report was prepared on May 15th.

PLAINTIFF’S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT OF QUIET TITLE AND WRIT OF POSSESSION AND IN SUPPORT OF MOTION TO DISMISS DEFENDANTS’ MOTION FOR CONTEMPT - 3

\$5,000 was applied by Mr. Visser to the Lapham obligation.

On July 2, 2014, an amendment to the Lapham Deed of Trust and Promissory Note was recorded and it specifies that Mr. Visser is to be given credit for \$5,000 paid in October, 2013.

The Court record also reflects that this matter came back before the Court on Defendants' Motion Re Plaintiff's Interference with Defendants' Ability to Comply with the Judgment filed May 7th, because the Defendants continued to use Lot 1 after vacating the premises to access Lot 2, despite the Plat that designates her access along the east boundary of the property. See Judgment, Exhibit "B".

The Court denied Defendants' Motion on May 23, 2014. Despite this, Plaintiff did allow Defendants crusher access through his property in June for the purpose of continued crushing with the representation by Defendants that said crushing was needed to raise funds to pay the Defendants' balance of the Lapham debt.

Following several meetings with counsel, counsel for the Plaintiff sent the August 27, 2014, letter to counsel setting forth the issues that need to be resolved including:

- Defendants' obligation to pay the remaining debt;
- Construct her own access;
- Repair damage to the parking lot on Lot 1;
- Provide a Phase I Report reflecting that the areas of oil or fuel spills have been adequately addressed complying with the requirement that Defendants be responsible for the damage to the premises or verification of clean up;
- That Defendants arrange for independent water meter and hookup;
- That Plaintiff agrees with the Defendants' suggestion of a privacy fence (not part of the Judgment); and,

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PLAINTIFF'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT OF QUIET TITLE AND WRIT OF POSSESSION AND IN SUPPORT OF MOTION TO DISMISS DEFENDANTS' MOTION FOR CONTEMPT - 4

- That Defendants accept responsibility and pay for the damage to buildings, both oil and fuel stains, as well as siding damage.

In response, Rex Finney sent an August 29th correspondence indicating that he would not extend any Vissers' deadline for payoff of October, 2014. See Affidavit of Counsel.

In response from Defendants' counsel, Plaintiff's counsel and Mr. Visser received no response, reply or action.

In Mid-November, 2014, counsel for the Plaintiff received a communication from Rex Finney asking if we could accept service of a foreclosure proceeding on behalf of Mr. Visser. This was communicated to Mr. Visser and opposing counsel, Margaret Williams, for the Defendants. Ms. Williams was asked if there was any activity or change of circumstances in since the August 27th letter setting forth her clients' obligations. Ms. Williams indicated that she was not aware of any change of the circumstances and did not believe that her client had paid off the remainder of the debt owed by her client.

By my calculations, the following division of debt should be applied:

Total obligation as of February 13, 2014, of \$308,827.44 divided equally is \$154,473.72/party, bearing interest at the rate of nine percent (9%) per annum from February 13th forward, or \$38.07 per day. Mr. Visser's March 27, 2015 Affidavit, Exhibit "C", establishes that he paid off the Lapham debt on December 31, 2014 in the amount of \$210,617.14. The evidence will also prove that he paid 2014 taxes in the amount of \$5,020.12. Mrs. Visser was supposed to have paid "all current and delinquent" taxes by January 27, 2014.

On December 31, 2014, Mr. Visser paid off the taxes and Lapham note at a cost of over \$215,000.00. However, Mr. Visser's share of the payoff on December 31, 2014, was

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PLAINTIFF'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT OF QUIET TITLE AND WRIT OF POSSESSION AND IN SUPPORT OF MOTION TO DISMISS DEFENDANTS' MOTION FOR CONTEMPT - 5

\$166,634.19 (half the February 13, 2014, balance of \$154,413.72 plus \$12,220.47 of accrued interest at the per diem rate of \$38.07 per day from February 13, 2014, through December 31, 2014. The difference of \$47,365.81 was paid by Mr. Visser on December 31, 2014, under threat of foreclosure after Defendants failed to comply with the judgment. This does not account for several payments, which should be credited to Mr. Visser, including \$5,000.00 paid October 15, 2013, (see Amendment, Modification and/or Correction of Deed of Trust and Promissory Note) and another \$5,000.00 paid from the rent for April, 2014, which should increase Ms. Visser's unpaid obligation to over \$57,000.00, and reduce Mr. Visser's share of the Lapham debt to \$156, 634.19.

II. ARGUMENT

A. Motion for Contempt

Idaho Rules of Civil Procedure, Rule 75, governs contempt proceedings but provides that the written charge of contempt for affidavit must allege specific facts constituting the alleged contempt. I.R.C.P. 75(c)(3). The Motion for Contempt and the Affidavits of Vicki Visser generally allege that Mr. Visser is in contempt for failing to deed Lot 2 to Ms. Visser and for encumbering Lot 2 such that it has "made it impossible for the Plaintiff to pass title free and clear to the Defendants". Motion for Contempt, ¶1.8. These allegations of contempt against Mr. Visser are premised upon the Defendants' assertion that "all of Defendants' obligations under the Judgment have been satisfied." Motion for Contempt, ¶1.3.

This is clearly not true since Ms. Visser's most recent Affidavit admits that: (1) she had not paid her half of the debt owed to Joe Lapham, but had "arranged" another loan from Lapham; and, (2) she had allegedly cleaned up the oil/gas spills, but did not obtain an updated Phase I assessment confirming she had remediated the areas leaving Mr. Visser with no ability

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PLAINTIFF'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT OF QUIET TITLE AND WRIT OF POSSESSION AND IN SUPPORT OF MOTION TO DISMISS DEFENDANTS' MOTION FOR CONTEMPT - 6

to sell Lot 1 or obtain reasonable financing to avoid foreclosure.

Additionally, Ms. Visser asserts in her most recent Affidavit that Mr. Visser had violated the agreement by failing to have the property plat finalized. In fact, Ms. Visser failed to pay all of 2013 taxes holding up the platting. She finally paid on June 18, 2014, whereupon the Bonner County Treasurer signed the Plat on July 2, 2014, and it was recorded on July 11th.

Whether a summary proceeding or a non-summary proceeding under Rule 75, a prerequisite to a contempt proceeding is the failure to abide by a court order.

In this case, there is no court order directing Mr. Visser to transfer Lot 2 to Ms. Visser because she had not complied with the conditions entitling her to Lot 2. The Court's Judgment and all preceding settlement agreements is clear that Mr. Visser's obligations to convey Lot 2 are conditioned upon Defendants' complete performance of all conditions.

The Judgment reads as follows:

"1. Plaintiff, Douglas Visser, will convey to the Defendant, Vicki Visser, that portion of the real propertydesignated as Lot 2 consisting of 6.2 acres **ONLY** upon condition that the Defendants and each of them fully and completely perform all of the obligations as set forth hereafter." Judgment, p.2, §A.

The conditions which have not been performed as provided by the Judgment are as follows:

- "All proceeds from crushing, removal, sale or disposition shall be directly to the trust account of Brent C. Featherston." Judgment, p.5, §A6
- "Defendants must still vacate the premises described as Lot 1 on or before March 31, 2014." Judgment, p.5, §B
- "Upon Defendants vacating the real property described above, possession of the

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property shall be restored to the Plaintiff in a condition of repair at least equivalent to or in as good or better condition as existed on or about August 15, 2013.” Judgment , p.5,§C

- “Defendants shall be liable for any cleanup and remediation necessary to accomplish restoration of the premises as provided herein.” Judgment, p.5, §6
- “Defendants shall be liable for any damage to the premises and shall take measures in vacating the premises to avoid causing damage to the property, or any part thereof, including mud ruts, etc.” Judgment, pp.5-6,§C
- “Defendants at their expense shall commission a Phase I Environmental Study to determine the existence or lack of existence of any environmental hazards or contamination It is understood that the Defendants’ obligations to restore the premises and to conduct a Phase I Environmental Study as set forth above, shall be specifically limited to and shall apply to Lot 1.” Judgment, p.6§D
- “Defendants are to pay all current and delinquent real estate property taxes for Lots 1 and 2 ‘which is a necessary condition to allow subdivision of the property’ on or before January 27, 2014. Judgment, p.3, §A2
- “On or before June 30, 2014, Defendants shall pay all remaining balance of the Defendant Vicki’s share of the Lapham debt inclusive of all interest and fees thereon also as described herein below.” Judgment, pp.3-4, §A4

In this case it is apparently conceded by Ms. Visser and her counsel that she did not pay the remaining balance of the Lapham debt. The Defendants did not fulfill the conditions of receiving title to Lot 2 and there is no basis for a contempt charge in this case, and the Court

should dismiss the same.

B. Plaintiff's Motion for Judgment of Quiet Title and Writ of Possession

All of the above deficiencies, which are nothing more than a continued pattern of Ms. Visser's conduct to date in this case, are cumulatively a violation of the Judgment and a failure on the Defendants' part to comply with the terms of the Judgment. As quoted above, the Plaintiff's obligation to deed Lot 2 was only upon condition that the Defendants fully and completely performed all of the obligations in the Judgment, which they clearly have not.

Furthermore, the Judgment provides in pertinent part as follows:

Should Defendants fail to perform any obligations set forth above, the Plaintiff shall be entitled to a Writ of Possession and a Judgment of Quiet Title in and to all of the real property described in Exhibit "A" hereto. Further, Plaintiff shall thereon be relieved of any obligation to subdivide said property or to convey any portion thereof to the Defendants. The Court shall thereafter enter a Judgment of Quiet Title in favor of Plaintiff, Douglas Visser, quieting and all claims of the Defendants to the real property described in Exhibit "A" upon such default or failure to perform by Defendants. Said Judgment of Quiet Title and Writ of Possession shall include direction to the Bonner County Sheriff or other authority to restore possession of the premises by thereafter removing and disposing of any and all personal property or inventory of the Defendants' upon the premises with the proceeds thereof to be paid to the Lapham debt as required

Judgment pp.6-7, §F

The Defendants have failed and/or refused to comply with the Court's Judgment in numerous respects as discussed in the preceding section. Those failures, in fact even one (1) of those failures, would justify the Court's entry of Judgment of Quiet Title. The Judgment entered February 19, 2014, is explicit that any failure to perform relieves Mr. Visser of the obligation to convey Lot 2 and entitles him to Judgment of Quiet Title and a Writ of Possession. This Court must take into account the history and pattern of the Defendants'

ATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

113 S. Second Ave.
Sandpoint, ID 83864
Phone (208) 263-6866
Fax (208) 263-0400

*Licensed in Idaho & Washington

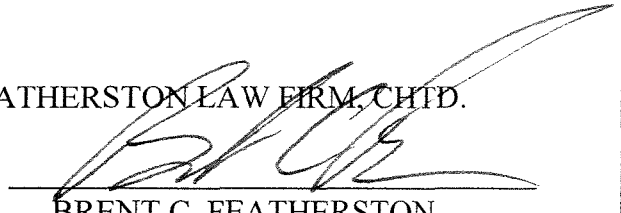
failures to perform and enter Judgment accordingly.

III. CONCLUSION

The Plaintiff is entitled to a Judgment of Quiet Title and a Writ of Possession for the premises including Lot 1 and Lot 2. Furthermore, the Plaintiff is entitled to award of attorney's fees and costs pursuant to the February 19, 2014, Judgment under paragraph H. Lastly, the Plaintiff is entitled to an Order dismissing Defendants' Motion for Contempt.

DATED this 8 day of May, 2015.

FEATHERSTON LAW FIRM, CHTD.

By: 
BRENT C. FEATHERSTON
Attorney for Plaintiff

CERTIFICATE OF MAILING


I hereby certify that on the 8 day of May, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person in the following manner:

D. Toby McLaughlin, Esq.
BERG & McLAUGHLIN, CHTD.
414 Church Street, Suite 203
Sandpoint, ID 83864

☐ U.S. Mail, Postage Prepaid
☐ Overnight Mail
☐ Hand delivered
☒ Facsimile No. (208) 263-7557
☒ Other: _____

Margaret Williams, Esq.
P.O. Box 283
Ponderay, ID 83852

☐ U.S. Mail, Postage Prepaid
☐ Overnight Mail
☐ Hand delivered
☒ Facsimile No. (888) 336-6064
☒ Other: _____

By 

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ATTORNEYS AT LAW

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Fax (208) 263-0400

*Licensed in Idaho & Washington

PLAINTIFF'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT OF QUIET TITLE AND WRIT OF POSSESSION AND IN SUPPORT OF MOTION TO DISMISS DEFENDANTS' MOTION FOR CONTEMPT - 10

ORIGINAL

FEATHERSTON LAW FIRM, CHTD.
BRENT C. FEATHERSTON, ISB NO. 4602
Attorney at Law
113 S. Second Avenue
Sandpoint, ID 83864
(208) 263-6866
(208) 263-0400 (Fax)
brent@featherstonlaw.com

2015 MAY 19 PM 4 18

CLEARING HOUSE

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man)
as to his sole and separate property,)

Plaintiff,)

vs.)

AUTO ALLEY, LLC, an Idaho)
limited liability company, CALVIN)
VISSER and VICKI VISSER, as)
individuals and in their capacity as)
Members and/or Managers of)
Auto Alley, LLC,)

Defendants.)

CASE NO. CV-2013-1045

**MOTION TO STRIKE
AFFIDAVIT OF JOE LAPHAM
IN RESPONSE TO PLAINTIFF'S
MOTION TO QUIET TITLE**

COMES NOW the undersigned counsel for and on behalf of the Plaintiff, Douglas Visser, by and through his attorney of record, Brent C. Featherston, Featherston Law Firm, Chtd., and moves this to strike the Affidavit of Joe Lapham dated May 13, 2015. This Motion is based upon Idaho Rules of Civil Procedure and Idaho Rules of Evidence which require that affidavits "made on personal knowledge", and which set forth such "facts as would be admissible in evidence" affirmatively showing that the affiant is competent to testify to the matters stated therein. I.R.C.P. 56(e)(2010).

Based upon the standards set forth in the Court Rules and case law applicable to, the

MOTION TO STRIKE AFFIDAVIT OF JOE LAPHAM IN RESPONSE TO PLAINTIFF'S MOTION TO QUIET TITLE - 1

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

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Jeremi L. Ossman

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Sandpoint, ID 83864
Phone (208) 263-6866
Fax (208) 263-0400

*Licensed in Idaho & Washington

Plaintiff, Douglas Visser moves to strike Affidavit of Joe Lapham as follows:

Paragraph 3, 4, 5, 6, and 7 contain hearsay references or rely upon or refer to documents or records not in evidence which are hearsay.

Mr. Lapham's affidavit testimony does not provide foundation for the admission of the hearsay statements, conclusions as to amounts owed, content of the parties' settlement agreement, or any conclusory statements as to an "agreed" upon "loan" between the Defendant and Mr. Lapham. Without this information, the Plaintiff is deprived of an opportunity to cross examine the affiant or establish the truth or veracity of the statements and their relevance to this proceeding.

IRE 803 sets forth a basis for authentication and admission of business records or "regularly conducted activity" but it still requires authentication and admission of the "memorandum, report, record or data compilation..." IRE 803(6). Affiant cannot simply attest to the hearsay contained within the loan documents (whether existing loans or future loans with Defendant) without authenticating the records or documents that his statements are based upon.

For the reasons set forth above and herein, and based upon the Idaho Rules of Civil Procedure and case law, the Plaintiff moves to strike the affidavit of Joe Lapham.

DATED this 19th day of May, 2015.

FEATHERSTON LAW FIRM, CHTD.

By 

BRENT C. FEATHERSTON
Attorney for Plaintiff

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

Daniel P. Featherston
Brent C. Featherston*
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*Licensed in Idaho & Washington

MOTION TO STRIKE AFFIDAVIT OF JOE LAPHAM IN RESPONSE TO PLAINTIFF'S MOTION TO QUIET TITLE - 2

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the above Motion to Strike will be called up for hearing at the Bonner County Courthouse, 215 S. First Avenue, Sandpoint, ID 83864 on the 20th day of May, 2015, at the hour of 1:30 p.m. before the Honorable Barbara Buchanan or as soon thereafter as counsel may be heard.

DATED this 19th day of May, 2015.

FEATHERSTON LAW FIRM, CHTD.

By 

BRENT C. FEATHERSTON
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of May, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

D. Toby McLaughlin, Esq.
BERG & McLAUGHLIN, CHTD.
414 Church Street, Suite 203
Sandpoint, ID 83864

☐ U.S. Mail, Postage Prepaid
☐ Overnight Mail
☐ Hand delivered
☒ Facsimile No. (208) 263-7557
☐ Other: _____

Margaret Williams, Esq.
P.O. Box 283
Ponderay, ID 83852

☐ U.S. Mail, Postage Prepaid
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☐ Other: _____

By 

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

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Brent C. Featherston*
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Jeremi L. Ossman

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MOTION TO STRIKE AFFIDAVIT OF JOE LAPHAM IN RESPONSE TO PLAINTIFF'S MOTION TO QUIET TITLE - 3

288

ORIGINAL

FEATHERSTON LAW FIRM, CHTD.
BRENT C. FEATHERSTON, ISB NO. 4602
Attorney at Law
113 S. Second Avenue
Sandpoint, ID 83864
(208) 263-6866
(208) 263-0400 (Fax)
brent@featherstonlaw.com

STATE OF IDAHO
COUNTY OF BONNER
FIRM: BRENT C. FEATHERSTON
2015 MAY 19 PM 4 19
CLEARED FOR FILING
DEPUTY

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man)
as to his sole and separate property,)

Plaintiff,)

vs.)

AUTO ALLEY, LLC, an Idaho)
limited liability company, CALVIN)
VISSER and VICKI VISSER, as)
individuals and in their capacity as)
Members and/or Managers of)
Auto Alley, LLC,)

Defendants.)

CASE NO. CV-2013-1045

**AMENDED
SUBPOENA DUCES TECUM
FOR PRODUCTION OR
INSPECTION OF DOCUMENTS,
ELECTRONICALLY STORED
INFORMATION, OR TANGIBLE
THINGS**

**The State of Idaho to: Margaret Williams, Esq.
P.O. Box 283
Ponderay, Idaho 83852**

YOU ARE COMMANDED:

- ☒ to appear at the place and time specified below to testify in the above case.
- ☐ to produce or permit inspection and copying of the following documents or objects, including electronically stored information, at the place, date and time specified below:
- ☐ to permit inspection of the following premises at the date and time specified below:

PLACE, DATE AND TIME:

Bonner County Courthouse
215 S. First Avenue
Sandpoint, ID 83864

Wednesday, May 20, 2015, at 1:30 p.m.

AMENDED SUBPOENA DUCES TECUM - 1

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

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Phone (208) 263-6866
Fax (208) 263-0400

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You are further notified that if you fail to appear at the place and time specified above, or produce or permit copying or inspection as specified above, that you may be held in contempt of court and that the aggrieved party may recover from you the sum of \$100.00 and all damages which he may sustain by your failure to attend as a witness.

DATED this 19th day of May, 2015.

FEATHERSTON LAW FIRM, CHTD.

By: 

BRENT C. FEATHERSTON
Attorney for Plaintiffs

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of May, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

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☐ Other: _____

By: 

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

113 S. Second Ave.
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ORIGINAL

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Attorney at Law
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(208) 263-6866
(208) 263-0400 (Fax)
brent@featherstonlaw.com

STATE OF IDAHO
COUNTY OF BONNER
CLERK OF DISTRICT COURT
2015 MAY 19 PM 4 19
CLEARANCE

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man)
as to his sole and separate property,)

Plaintiff,)

vs.)

AUTO ALLEY, LLC, an Idaho)
limited liability company, CALVIN)
VISSER and VICKI VISSER, as)
individuals and in their capacity as)
Members and/or Managers of)
Auto Alley, LLC,)

Defendants.)

CASE NO. CV-2013-1045

AMENDED

**SUBPOENA DUCES TECUM
FOR PRODUCTION OR
INSPECTION OF DOCUMENTS,
ELECTRONICALLY STORED
INFORMATION, OR TANGIBLE
THINGS**

The State of Idaho to: Panhandle Escrow Services, Inc.
Attn: Jackie Fuqua
113 N. Second Avenue
Sandpoint, Idaho 83864

YOU ARE COMMANDED:

- ☒ to appear at the place and time specified below to testify in the above case.
- ☒ to produce or permit inspection and copying of the following documents or objects, including electronically stored information, at the place, date and time specified below:

Any and all records pertaining to Escrow Account No. 2056920

AMENDED SUBPOENA DUCES TECUM - 1

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

113 S. Second Ave.
Sandpoint, ID 83864
Phone (208) 263-6866
Fax (208) 263-0400

*Licensed in Idaho & Washington

[] to permit inspection of the following premises at the date and time specified below:

PLACE, DATE AND TIME: Bonner County Courthouse
215 S. First Avenue
Sandpoint, ID 83864

Wednesday, May 20, 2015, at 1:30 p.m.

You are further notified that if you fail to appear at the place and time specified above, or produce or permit copying or inspection as specified above, that you may be held in contempt of court and that the aggrieved party may recover from you the sum of \$100.00 and all damages which he may sustain by your failure to attend as a witness.

DATED this 19th day of May, 2015.

FEATHERSTON LAW FIRM, CHTD.

By: 

BRENT C. FEATHERSTON
Attorney for Plaintiffs

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of May, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

D. Toby McLaughlin, Esq.
BERG & McLAUGHLIN, CHTD.
414 Church Street, Suite 203
Sandpoint, ID 83864

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☒ Facsimile No. (208) 263-7557
[] Other: _____

Margaret Williams, Esq.
P.O. Box 283
Ponderay, ID 83852

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☒ Facsimile No. (888) 336-6064
[] Other: _____

By: 

AMENDED SUBPOENA DUCES TECUM - 2

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

113 S. Second Ave.
Sandpoint, ID 83864
Phone (208) 263-6866
Fax (208) 263-0400

*Licensed in Idaho & Washington

292

ORIGINAL

FILED IN DISTRICT COURT
2015 MAY 19 PM 4 19
CLERK OF DISTRICT COURT
DEPT. 7

FEATHERSTON LAW FIRM, CHTD.
BRENT C. FEATHERSTON, ISB NO. 4602
Attorney at Law
113 S. Second Avenue
Sandpoint, ID 83864
(208) 263-6866
(208) 263-0400 (Fax)
brent@featherstonlaw.com

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man)
as to his sole and separate property,)

Plaintiff,)

vs.)

AUTO ALLEY, LLC, an Idaho)
limited liability company, CALVIN)
VISSER and VICKI VISSER, as)
individuals and in their capacity as)
Members and/or Managers of)
Auto Alley, LLC,)

Defendants.)

CASE NO. CV-2013-1045

AMENDED

**SUBPOENA DUCES TECUM
FOR PRODUCTION OR
INSPECTION OF DOCUMENTS,
ELECTRONICALLY STORED
INFORMATION, OR TANGIBLE
THINGS**

The State of Idaho to:

**Vicki Visser
c/o D. Toby McLaughlin
414 Church Street, Suite 203
Sandpoint, Idaho 83864**

YOU ARE COMMANDED:

- [x] to appear at the place and time specified below to testify in the above case.
- [] to produce or permit inspection and copying of the following documents or objects,
including electronically stored information, at the place, date and time specified below:
- [] to permit inspection of the following premises at the date and time specified below:

AMENDED SUBPOENA DUCES TECUM - 1

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

Daniel P. Featherston
Brent C. Featherston*
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Jeremi L. Ossman

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Sandpoint, ID 83864
Phone (208) 263-6866
Fax (208) 263-0400

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PLACE, DATE AND TIME:

Bonner County Courthouse
215 S. First Avenue
Sandpoint, ID 83864

Wednesday, May 20, 2015, at 1:30 p.m.

You are further notified that if you fail to appear at the place and time specified above, or produce or permit copying or inspection as specified above, that you may be held in contempt of court and that the aggrieved party may recover from you the sum of \$100.00 and all damages which he may sustain by your failure to attend as a witness.

DATED this 19th day of May, 2015.

FEATHERSTON LAW FIRM, CHTD.

By: 

BRENT C. FEATHERSTON
Attorney for Plaintiffs

CERTIFICATE OF MAILING

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Jeremy P. Featherston
Jeremi L. Ossman

113 S. Second Ave.
Sandpoint, ID 83864
Phone (208) 263-6866
Fax (208) 263-0400

By: 

ORIGINAL

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

FEATHERSTON LAW FIRM, CHTD.
BRENT C. FEATHERSTON, ISB NO. 4602
Attorney at Law
113 S. Second Avenue
Sandpoint, ID 83864
(208) 263-6866
(208) 263-0400 (Fax)
brent@featherstonlaw.com

2015 MAY 19 PM 4 19

CLERK OF DISTRICT COURT

DEPUTY

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man)
as to his sole and separate property,)

CASE NO. CV-2013-1045

Plaintiff,)

vs.)

AUTO ALLEY, LLC, an Idaho)
limited liability company, CALVIN)
VISSER and VICKI VISSER, as)
individuals and in their capacity as)
Members and/or Managers of)
Auto Alley, LLC,)

**AMENDED
SUBPOENA DUCES TECUM
FOR PRODUCTION OR
INSPECTION OF DOCUMENTS,
ELECTRONICALLY STORED
INFORMATION, OR TANGIBLE
THINGS**

Defendants.)

The State of Idaho to:

**Bonner County Treasurer
Attn: Cheryl Piehl
1500 Highway 2
Sandpoint, Idaho 83864**

YOU ARE COMMANDED:

- ☒ [x] to appear at the place and time specified below to testify in the above case.
- ☒ [x] to produce or permit inspection and copying of the following documents or objects, including electronically stored information, at the place, date and time specified below:

**Any and all records pertaining to the taxes of the real property (Lots 1 and 2)
Located at 31564 Highway 200, Ponderay, ID 83852 owned by Doug Visser.**

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

113 S. Second Ave.
Sandpoint, ID 83864
Phone (208) 263-6866
Fax (208) 263-0400

*Licensed in Idaho & Washington

AMENDED SUBPOENA DUCES TECUM - 1

[] to permit inspection of the following premises at the date and time specified below:

PLACE, DATE AND TIME: Bonner County Courthouse
215 S. First Avenue
Sandpoint, Idaho 83864

Wednesday, May 20, 2015, at 1:30 p.m.

You are further notified that if you fail to appear at the place and time specified above, or produce or permit copying or inspection as specified above, that you may be held in contempt of court and that the aggrieved party may recover from you the sum of \$100.00 and all damages which he may sustain by your failure to attend as a witness.

DATED this 19th day of May, 2015.

FEATHERSTON LAW FIRM, CHTD.

By: 

BRENT C. FEATHERSTON
Attorney for Plaintiffs

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of May, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

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Sandpoint, ID 83864

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[] Other: _____

By: 

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

113 S. Second Ave.
Sandpoint, ID 83864
Phone (208) 263-6866
Fax (208) 263-0400

ORIGINAL

STATE OF IDAHO
CLERK OF DISTRICT COURT
BONNER COUNTY, IDAHO

2015 MAY 18 PM 4 19

CLERK OF DISTRICT COURT

DEPT. 17

FEATHERSTON LAW FIRM, CHTD.
BRENT C. FEATHERSTON, ISB NO. 4602
Attorney at Law
113 S. Second Avenue
Sandpoint, ID 83864
(208) 263-6866
(208) 263-0400 (Fax)
brent@featherstonlaw.com

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man)
as to his sole and separate property,)

Plaintiff,)

vs.)

AUTO ALLEY, LLC, an Idaho)
limited liability company, CALVIN)
VISSER and VICKI VISSER, as)
individuals and in their capacity as)
Members and/or Managers of)
Auto Alley, LLC,)

Defendants.)

CASE NO. CV-2013-1045

AMENDED

**SUBPOENA DUCES TECUM
FOR PRODUCTION OR
INSPECTION OF DOCUMENTS,
ELECTRONICALLY STORED
INFORMATION, OR TANGIBLE
THINGS**

**The State of Idaho to: Loan Star Mortgage
 Attn: Jeff Eich
 101 N. First Avenue, Suite A
 Sandpoint, Idaho 83864**

YOU ARE COMMANDED:

- [x] to appear at the place and time specified below to testify in the above case.
- [x] to produce or permit inspection and copying of the following documents or objects,
including electronically stored information, at the place, date and time specified below:

**Any and all records pertaining to loans to Douglas L.
Visser on the property located at 31564 Highway 200,
Ponderay, ID 83852, and which loan closed File No.**

AMENDED SUBPOENA DUCES TECUM - I

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

113 S. Second Ave.
Sandpoint, ID 83864
Phone (208) 263-6866
Fax (208) 263-0400

*Licensed in Idaho & Washington

**252179 at Alliance Title and Escrow on or about December
31, 2014**

[] to permit inspection of the following premises at the date and time specified below:

PLACE, DATE AND TIME: Bonner County Courthouse
215 S. First Avenue
Sandpoint, ID 83864

Wednesday, May 20, 2015, at 1:30 p.m.

You are further notified that if you fail to appear at the place and time specified above, or produce or permit copying or inspection as specified above, that you may be held in contempt of court and that the aggrieved party may recover from you the sum of \$100.00 and all damages which he may sustain by your failure to attend as a witness.

DATED this 19th day of May, 2015.

FEATHERSTON LAW FIRM, CHTD.

By: 

BRENT C. FEATHERSTON
Attorney for Plaintiffs

CERTIFICATE OF MAILING

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Ponderay, ID 83852

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[] Other: _____

By: 

AMENDED SUBPOENA DUCES TECUM - 2

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

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Phone (208) 263-6866
Fax (208) 263-0400

ORIGINAL

FEATHERSTON LAW FIRM, CHTD.
BRENT C. FEATHERSTON, ISB NO. 4602
Attorney at Law
113 S. Second Avenue
Sandpoint, ID 83864
(208) 263-6866
(208) 263-0400 (Fax)
brent@featherstonlaw.com

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man)
as to his sole and separate property,)

Plaintiff,)

vs.)

AUTO ALLEY, LLC, an Idaho)
limited liability company, CALVIN)
VISSER and VICKI VISSER, as)
individuals and in their capacity as)
Members and/or Managers of)
Auto Alley, LLC,)

Defendants.)

CASE NO. CV-2013-1045

AMENDED

**SUBPOENA DUCES TECUM
FOR PRODUCTION OR
INSPECTION OF DOCUMENTS,
ELECTRONICALLY STORED
INFORMATION, OR TANGIBLE
THINGS**

The State of Idaho to:

**Calvin Visser
c/o D. Toby McLaughlin
414 Church Street, Suite 203
Sandpoint, Idaho 83864**

YOU ARE COMMANDED:

- ☒ to appear at the place and time specified below to testify in the above case.
- ☐ to produce or permit inspection and copying of the following documents or objects, including electronically stored information, at the place, date and time specified below:
- ☐ to permit inspection of the following premises at the date and time specified below:

AMENDED SUBPOENA DUCES TECUM - 1

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

113 S. Second Ave.
Sandpoint, ID 83864
Phone (208) 263-6866
Fax (208) 263-0400

*Licensed in Idaho & Washington

PLACE, DATE AND TIME:

Bonner County Courthouse
215 S. First Avenue
Sandpoint, ID 83864

Wednesday, May 20, 2015, at 1:30 p.m.

You are further notified that if you fail to appear at the place and time specified above, or produce or permit copying or inspection as specified above, that you may be held in contempt of court and that the aggrieved party may recover from you the sum of \$100.00 and all damages which he may sustain by your failure to attend as a witness.

DATED this 19th day of May, 2015.

FEATHERSTON LAW FIRM, CHTD.

By: 

BRENT C. FEATHERSTON
Attorney for Plaintiffs

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of May, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

D. Toby McLaughlin, Esq.
BERG & McLAUGHLIN, CHTD.
414 Church Street, Suite 203
Sandpoint, ID 83864

- ☐ U.S. Mail, Postage Prepaid
☐ Overnight Mail
☐ Hand delivered
☒ Facsimile No. (208) 263-7557
☐ Other: _____

Margaret Williams, Esq.
P.O. Box 283
Ponderay, ID 83852

- ☐ U.S. Mail, Postage Prepaid
☐ Overnight Mail
☐ Hand delivered
☒ Facsimile No. (888) 336-6064
☐ Other: _____

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ATTORNEYS AT LAW

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113 S. Second Ave.
Sandpoint, ID 83864
Phone (208) 263-6866
Fax (208) 263-0400

By: 

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF BONNER
215 S. FIRST AVENUE
SANDPOINT, IDAHO 83864

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2015 MAY 20 PM 3 13

Case No: CV-2013-0001645

NOTICE OF HEARING

Douglas Visser

vs.

Auto Alley, LLC, etal.

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Motion for Judgment of Quiet Title and Writ of Possession: Thursday, May 28, 2015 09:00 AM
Evidentiary Hearing on Contempt: Thursday, May 28, 2015 09:00 AM

Judge: Barbara A. Buchanan

Additional Presiding Judges: Charles W. Hosack, John P. Luster, John T. Mitchell,
Fred M. Gibler, Steven Verby, George Reinhardt, III, Jeff Brudie, Lansing Haynes,
Benjamin Simpson, Carl Kerrick, Michael Griffin, John Stegner, Barbara Buchanan,
Richard Christensen, Jay Gaskill

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on Wednesday, May 20, 2015.

BRENT FEATHERSTON
113 S. SECOND
SANDPOINT ID 83864

_____ Mailed _____ Hand Delivered ☒ Faxed

D. TOBY MCLAUGHLIN
414 CHURCH ST STE 203
SANDPOINT ID 83864

_____ Mailed _____ Hand Delivered ☒ Faxed

MARGARET WILLIAMS
COURTHOUSE MAILBOX

_____ Mailed _____ Hand Delivered ☒ Faxed

Dated: May 20th, 2015
Michael W. Rosedale
Clerk Of The District Court

By:

A. Phillips
Deputy Clerk

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

COURT MINUTES

JUDGE: BARBARA A. BUCHANAN CASE NO. CV-2013-1045
REPORTER: JULIE MCCAUGHAN DATE: 5/20/2015 TIME: 9:00 AM
CLERK: ANN PHILLIPS CTRM 1
DIVISION: DISTRICT

DOUGLAS VISSER

vs

AUTO ALLEY LLC ET AL

Plaintiff / Petitioner

Defendant / Respondent

Atty: BRENT FEATHERSTON

Atty: TOBY MCLAUGHLIN

SUBJECT OF PROCEEDINGS

**PLAINTIFF'S MOTION FOR WRIT OF POSSESSION AND JUDGMENT
OF QUIET TITLE
DEFENDANT'S MOTION FOR CONTEMPT**

INDEX	SPEAKER	PHASE OF CASE
135	J	Calls Case
		Present: BRENT FEATHERSTON; DOUGLAS VISSER; TOBY MCLAUGHLIN; DEFENDANTS VICKI VISSER; CALVIN VISSER
	J	ONLY HAVE AN HOUR AVAILABLE, ANTICIPATING EVIDENTIARY HEARING THAT WOULD TAKE SEVERAL HOURS; I ONLY HAVE AN HOUR TODAY; HAVE PENDING THE MOTION FOR CONTEMPT FILED BY BERG AND MCLAUGHLIN; MOTION FOR JUDGMENT OF QUIET TITLE AND WRIT OF POSSESSION; SO CROSS ISSUES; I ASSUME MR FEATHERSTON, YOUR CLIENT WANTS TO ENTER FORMAL DENIAL ON CONTEMPT?
	BF	ABSOLUTELY
	J	WANT TO MAKES SURE HE UNDERSTANDS HIS RIGHTS; (REVIEWS FILE); UNDERSTAND THAT ON CONTEMPT PROCEEDING CAN HAVE POSSIBILITY OF JAIL SENTENCE AND A FINE; THIS MOTION FOR EACH COUNT MAXIMUM IS 5,000 AND JAIL 5 DAYS; RIGHT TO A TRIAL ON ISSUE OF CONTEMPT AND FOR COUNSEL IF YOU DIDN'T HAVE COUNSEL; AND TO TESTIFY ON YOUR OWN BEHALF; SO WILL ENTER DENIAL AND SET HEARING ; ALSO ON WRIT AND QUIET TITLE ; WOULD ONE HEARING WORK?
	BF	SOMEWHAT A TECHNICAL ISSUE; I HAVE GONE OVE RIGHTS WITH CLIENT; THE FORM DIDN'T HAVE THE HEARING DATE; BUT WAS RESET BY COURT ORDER; COMPETING ISSUES OVER COURT'S JUDGMENT; TO ME, ONE TRIAL
	TB	ABSOLUTELY AGREE; ALLEGING BREACH OF JUDGMENT
	J	DO IN HALF A DAY?
	TB	HAD RES JUDICATA ON SAME ISSUES, I THINK HALF DAY SUFFICIENT
	BF	IF 3 HRS, I THINK CLOSE TO THAT; THREE OTHER WITNESSES SUBPOENED
	TM	HAVE BOTH MY CLIENTS
	J	SO THAT IS GOING TO BE PUSHING IT
142		OFF RECORD
144		BACK ON RECORD
	J	COURT HAS TIME NEXT THURSDAY; MR LAPHAM IS NOT AVAILABLE, CAN ARRANGE ANOTHER TIME TO GET HIS TESTIMONY; SO 9 ON THURSDAY MAY 28; UNTIL 2:30 IN AFTERNOON
	BF	TWO ISSUES, ONE IS PERHAPS (INAUDIBLE) DIDN'T SEE THAT BRIEF; COURT MAKE RULING IF WE HAD SOMEWHAT BRIEFED IN ADVANCE; TALK AND SEE IF MR LAPHAM'S TESTIMONY NECESSARY
	TM	ALWAYS OPEN TO TALKING ABOUT IT

	J	HAVE STIPULATED JUDGMENT, FEB 19, 2014, THEN SEVERAL HEARINGS AFTER THAT; COURT MADE SOME OTHER JUDGMENTS
	BF	HAD 2 OTHER HEARINGS FOR OTHER JUDGMENTS
	TM	OUR RESPONSE TO RES JUDICATA (COMMENTS) JUST FILED 2 DAYS BEFORE HEARING
147		I HADN'T SEEN THEM YET; SO 9 ON THURSDAY

FEATHERSTON LAW FIRM, CHTD.

BRENT C. FEATHERSTON, ISB NO. 4602

Attorney at Law

113 S. Second Avenue

Sandpoint, ID 83864

(208) 263-6866

(208) 263-0400 (Fax)

brent@featherstonlaw.com

STATE OF IDAHO
COUNTY OF BONNER
2015 MAY 22 AM 9 32
CLERK OF DISTRICT COURT
DEPUTY

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man)
as to his sole and separate property,)

Plaintiff,)

vs.)

AUTO ALLEY, LLC, an Idaho)
limited liability company, CALVIN)
VISSER and VICKI VISSER, as)
individuals and in their capacity as)
Members and/or Managers of)
Auto Alley, LLC,)

Defendants.)

CASE NO. CV-2013-1045

SECOND AMENDED SUBPOENA

The State of Idaho to:

**Calvin Visser
c/o D. Toby McLaughlin
414 Church Street, Suite 203
Sandpoint, Idaho 83864**

YOU ARE COMMANDED:

- ☒ to appear at the place and time specified below to testify in the above case.
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- ☐ to permit inspection of the following premises at the date and time specified below:

SECOND AMENDED SUBPOENA - 1

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

113 S. Second Ave.
Sandpoint, ID 83864
Phone (208) 263-6866
Fax (208) 263-0400

*Licensed in Idaho & Washington

PLACE, DATE AND TIME:

Bonner County Courthouse
215 S. First Avenue
Sandpoint, ID 83864

Thursday, May 28, 2015, at 9:00 a.m.

You are further notified that if you fail to appear at the place and time specified above, or produce or permit copying or inspection as specified above, that you may be held in contempt of court and that the aggrieved party may recover from you the sum of \$100.00 and all damages which he may sustain by your failure to attend as a witness.

DATED this 21st day of May, 2015.

FEATHERSTON LAW FIRM, CHTD.

By: 

BRENT C. FEATHERSTON
Attorney for Plaintiffs

CERTIFICATE OF MAILING

I hereby certify that on the 21 day of May, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

D. Toby McLaughlin, Esq.
BERG & McLAUGHLIN, CHTD.
414 Church Street, Suite 203
Sandpoint, ID 83864

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☐ Overnight Mail
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☐ Other: _____

Margaret Williams, Esq.
P.O. Box 283
Ponderay, ID 83852

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☒ Facsimile No. (888) 336-6064
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Jeremy P. Featherston
Jeremi L. Ossman

113 S. Second Ave.
Sandpoint, ID 83864
Phone (208) 263-6866
Fax (208) 263-0400

By 

SECOND AMENDED SUBPOENA - 2

FEATHERSTON LAW FIRM, CHTD.

BRENT C. FEATHERSTON, ISB NO. 4602

Attorney at Law

113 S. Second Avenue

Sandpoint, ID 83864

(208) 263-6866

(208) 263-0400 (Fax)

brent@featherstonlaw.com

2015 MAY 22 AM 9 32

CLERK

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man)
as to his sole and separate property,)

Plaintiff,)

vs.)

AUTO ALLEY, LLC, an Idaho)
limited liability company, CALVIN)
VISSER and VICKI VISSER, as)
individuals and in their capacity as)
Members and/or Managers of)
Auto Alley, LLC,)

Defendants.)

CASE NO. CV-2013-1045

SECOND AMENDED SUBPOENA

The State of Idaho to: Margaret Williams, Esq.
P.O. Box 283
Ponderay, Idaho 83852

YOU ARE COMMANDED:

- ☒ to appear at the place and time specified below to testify in the above case.
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- ☐ to permit inspection of the following premises at the date and time specified below:

PLACE, DATE AND TIME:

Bonner County Courthouse
215 S. First Avenue
Sandpoint, ID 83864

Thursday, May 28, 2015, at 9:00 a.m.

SECOND AMENDED SUBPOENA - 1

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

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DATED this 21 day of May, 2015.

FEATHERSTON LAW FIRM, CHTD.

By: 

BRENT C. FEATHERSTON
Attorney for Plaintiffs

CERTIFICATE OF MAILING

I hereby certify that on the 21 day of May, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

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By 

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

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Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

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SECOND AMENDED SUBPOENA - 2

307

FEATHERSTON LAW FIRM, CHTD.

BRENT C. FEATHERSTON, ISB NO. 4602

Attorney at Law

113 S. Second Avenue

Sandpoint, ID 83864

(208) 263-6866

(208) 263-0400 (Fax)

brent@featherstonlaw.com

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man)
as to his sole and separate property,)

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individuals and in their capacity as)
Members and/or Managers of)
Auto Alley, LLC,)

Defendants.)

CASE NO. CV-2013-1045

SECOND AMENDED SUBPOENA

The State of Idaho to:

**Vicki Visser
c/o D. Toby McLaughlin
414 Church Street, Suite 203
Sandpoint, Idaho 83864**

YOU ARE COMMANDED:

- ☒ [x] to appear at the place and time specified below to testify in the above case.
- ☐ [] to produce or permit inspection and copying of the following documents or objects,
including electronically stored information, at the place, date and time specified below:
- ☐ [] to permit inspection of the following premises at the date and time specified below:

SECOND AMENDED SUBPOENA - 1

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

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DATED this 21st day of May, 2015.

FEATHERSTON LAW FIRM, CHTD.

By: 

BRENT C. FEATHERSTON
Attorney for Plaintiffs

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Attorney at Law

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Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
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DOUGLAS VISSER, a married man)
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Defendants.)

CASE NO. CV-2013-1045

SECOND AMENDED

SUBPOENA DUCES TECUM

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INFORMATION, OR TANGIBLE

THINGS

The State of Idaho to:

Panhandle Escrow Services, Inc.

Attn: Jackie Fuqua

113 N. Second Avenue

Sandpoint, Idaho 83864

YOU ARE COMMANDED:

[x] to appear at the place and time specified below to testify in the above case.

[x] to produce or permit inspection and copying of the following documents or objects,
including electronically stored information, at the place, date and time specified below:

Any and all records pertaining to Escrow Account No. 2056920

SECOND AMENDED SUBPOENA DUCES TECUM - 1

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

113 S. Second Ave.
Sandpoint, ID 83864
Phone (208) 263-6866
Fax (208) 263-0400

*Licensed in Idaho & Washington

[] to permit inspection of the following premises at the date and time specified below:

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Bonner County Courthouse
215 S. First Avenue
Sandpoint, ID 83864

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DATED this 21st day of May, 2015.

FEATHERSTON LAW FIRM, CHTD.

By: 

BRENT C. FEATHERSTON
Attorney for Plaintiffs

CERTIFICATE OF MAILING

I hereby certify that on the 21st day of May, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

D. Toby McLaughlin, Esq.
BERG & McLAUGHLIN, CHTD.
414 Church Street, Suite 203
Sandpoint, ID 83864

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[] Other: _____

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Jeremy P. Featherston
Jeremi L. Ossman

113 S. Second Ave.
Sandpoint, ID 83864
Phone (208) 263-6866
Fax (208) 263-0400

By: 

STATE OF IDAHO
CLERK OF DISTRICT COURT
JULY 22 AM 9 31
CLERK OF DISTRICT COURT
FILED

FEATHERSTON LAW FIRM, CHTD.
BRENT C. FEATHERSTON, ISB NO. 4602

Attorney at Law
113 S. Second Avenue
Sandpoint, ID 83864
(208) 263-6866
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brent@featherstonlaw.com

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**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
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DOUGLAS VISSER, a married man)
as to his sole and separate property,)

Plaintiff,)

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Auto Alley, LLC,)

Defendants.)

CASE NO. CV-2013-1045

**SECOND AMENDED
SUBPOENA DUCES TECUM
FOR PRODUCTION OR
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ELECTRONICALLY STORED
INFORMATION, OR TANGIBLE
THINGS**

The State of Idaho to: **Loan Star Mortgage**
Attn: Jeff Eich
101 N. First Avenue, Suite A
Sandpoint, Idaho 83864

YOU ARE COMMANDED:

☐ to appear at the place and time specified below to testify in the above case.

☐ to produce or permit inspection and copying of the following documents or objects,
including electronically stored information, at the place, date and time specified below:

**Any and all records pertaining to loans to Douglas L.
Visser on the property located at 31564 Highway 200,
Ponderay, ID 83852, and which loan closed File No.**

SECOND AMENDED SUBPOENA DUCES TECUM - 1

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

113 S. Second Ave.
Sandpoint, ID 83864
Phone (208) 263-6866
Fax (208) 263-0400

*Licensed in Idaho & Washington

**252179 at Alliance Title and Escrow on or about December
31, 2014**

[] to permit inspection of the following premises at the date and time specified below:

PLACE, DATE AND TIME: Bonner County Courthouse
215 S. First Avenue
Sandpoint, ID 83864

Thursday, May 28, 2015, at 9:00 a.m.

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DATED this 21st day of May, 2015.

FEATHERSTON LAW FIRM, CHTD.

By: 

BRENT C. FEATHERSTON
Attorney for Plaintiffs

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By: 

FEATHERSTON LAW FIRM, CHTD.

BRENT C. FEATHERSTON, ISB NO. 4602

Attorney at Law

113 S. Second Avenue

Sandpoint, ID 83864

(208) 263-6866

(208) 263-0400 (Fax)

brent@featherstonlaw.com

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man)
as to his sole and separate property,)

Plaintiff,)

vs.)

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limited liability company, CALVIN)
VISSER and VICKI VISSER, as)
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Auto Alley, LLC,)

Defendants.)

CASE NO. CV-2013-1045

**SECOND AMENDED
SUBPOENA DUCES TECUM
FOR PRODUCTION OR
INSPECTION OF DOCUMENTS,
ELECTRONICALLY STORED
INFORMATION, OR TANGIBLE
THINGS**

**The State of Idaho to: Bonner County Treasurer
Attn: Cheryl Piehl
1500 Highway 2
Sandpoint, Idaho 83864**

YOU ARE COMMANDED:

- ☒ to appear at the place and time specified below to testify in the above case.
- ☒ to produce or permit inspection and copying of the following documents or objects, including electronically stored information, at the place, date and time specified below:

**Any and all records pertaining to the taxes of the real property (Lots 1 and 2)
Located at 31564 Highway 200, Ponderay, ID 83852 owned by Doug Visser.**

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

113 S. Second Ave.
Sandpoint, ID 83864
Phone (208) 263-6866
Fax (208) 263-0400

*Licensed in Idaho & Washington

SECOND AMENDED SUBPOENA DUCES TECUM - 1

[] to permit inspection of the following premises at the date and time specified below:

PLACE, DATE AND TIME: Bonner County Courthouse
215 S. First Avenue
Sandpoint, Idaho 83864

Thursday, May 28, 2015, at 9:00 a.m.

You are further notified that if you fail to appear at the place and time specified above, or produce or permit copying or inspection as specified above, that you may be held in contempt of court and that the aggrieved party may recover from you the sum of \$100.00 and all damages which he may sustain by your failure to attend as a witness.

DATED this 21st day of May, 2015.

FEATHERSTON LAW FIRM, CHTD.

By: 

BRENT C. FEATHERSTON
Attorney for Plaintiffs

CERTIFICATE OF MAILING

I hereby certify that on the 21st day of May, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

D. Toby McLaughlin, Esq.
BERG & McLAUGHLIN, CHTD.
414 Church Street, Suite 203
Sandpoint, ID 83864

- [] U.S. Mail, Postage Prepaid
[] Overnight Mail
[] Hand delivered
[x] Facsimile No. (208) 263-7557
[] Other: _____

Margaret Williams, Esq.
P.O. Box 283
Ponderay, ID 83852

- [] U.S. Mail, Postage Prepaid
[] Overnight Mail
[] Hand delivered
[x] Facsimile No. (888) 336-6064
[] Other: _____

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By 

FEATHERSTON LAW FIRM, CHTD.

BRENT C. FEATHERSTON, ISB NO. 4602

Attorney at Law

113 S. Second Avenue

Sandpoint, ID 83864

(208) 263-6866

(208) 263-0400 (Fax)

brent@featherstonlaw.com

2015 MAY 22 AM 9 31

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man)
as to his sole and separate property,)

Plaintiff,)

vs.)

AUTO ALLEY, LLC, an Idaho)
limited liability company, CALVIN)
VISSER and VICKI VISSER, as)
individuals and in their capacity as)
Members and/or Managers of)
Auto Alley, LLC,)

Defendants.)

CASE NO. CV-2013-1045

SUBPOENA

The State of Idaho to:

Rex A. Finney, Esq.

FINNEY, FINNEY & FINNEY, PA

120 E. Lake Street, Suite 317

Sandpoint, Idaho 83864

YOU ARE COMMANDED:

☒ to appear at the place and time specified below to testify in the above case.

☐ to produce or permit inspection and copying of the following documents or objects,
including electronically stored information, at the place, date and time specified below:

☐ to permit inspection of the following premises at the date and time specified below:

PLACE, DATE AND TIME:

Bonner County Courthouse

215 S. First Avenue

Sandpoint, ID 83864

FEATHERSTON LAW FIRM, CHTD.
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SUBPOENA - 1

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DATED this 21st day of May, 2015.

FEATHERSTON LAW FIRM, CHTD.

By: 

BRENT C. FEATHERSTON
Attorney for Plaintiffs

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Sandpoint, ID 83864

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- ☐ Overnight Mail
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- ☐ Other: _____

Margaret Williams, Esq.
P.O. Box 283
Ponderay, ID 83852

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By 

FEATHERSTON LAW FIRM, CHTD.
ATTORNEYS AT LAW

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Brent C. Featherston*
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Jeremi L. Ossman

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*Licensed in Idaho & Washington

SUBPOENA - 2

312

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

COURT MINUTES

JUDGE:	BARBARA BUCHANAN	CASE NO.	CV-2013-1045	
REPORTER:	VAL LARSEN	DATE:	5-28-15	TIME: 9:00 A.M.
CLERK:	LINDA OPPELT	COURTROOM	3+	
DIVISION:	DISTRICT			

DOUGLAS VISSER

vs

AUTO ALLEY, LLC, ETAL

Plaintiff / Petitioner

Defendant / Respondent

Atty: BRENT FEATHERSTON

Atty: D. TOBY MCLAUGHLIN

SUBJECT OF PROCEEDINGS

**MOTION FOR WRIT OF POSSESSION AND JUDGMENT OF QUIET
TITLE;
EVIDENTIARY ON CONTEMPT**

INDEX	SPEAKER	PHASE OF CASE
9:03	J	Calls Case
		Present: BRENT FEATHERSTON, TOBY MCLAUGHLIN
	J	WHO WANTS TO BEGIN.
	BF	WOULD LIKE TO START. TWO WITNESSES NEED TO LEAVE.
	TM	DON'T MIND CALLING WITNESSES OUT OF ORDER.
	CLERK	CHERYL DIANE PIEHL SWORN
	BF	DIRECT
	CP	BONNER COUNTY TREASURER. HELD OFFICE FOR 13 YEARS.
		BROUGHT FILE FOR THE VISSER PROPERTY.
		EXHIBIT 9 – COPY OF TAX NOTICE. FAXED 5-21-14 TO BRENT, I AM ASSUMING YOU. FAXED BY CLORISSA, SHE IS CHIEF DEPUTY IN MY OFFICE. \$1000.00 DUE FOR THE SECOND HALF. THE ORIGINAL BILL WAS FOR \$9692.88, \$8692.88 WAS PAID. VICKIES L VISSER- MADE THE PAYMENT.
	BF	MOVE TO ADMIT 9.
	TM	NO OBJECTION.
	J	ADMIT EXHIBIT 9
	CP	EXHIBIT NUMBER 10 – CITES WHAT DOCUMENTS ARE.
		THE 4 TH PAGE – PAID ON 1-12-15 FROM ALLIANCE TITLE AND ESCROW THEY PAID \$5020.12. THAT PAID THE 2014 TAXES. THAT PAID ONLY THE FIRST HALF. THE AMOUNT PAID INCLUDED LATE FEES.
9:13		NEXT PAGE – 2013 WERE PAID ON 1-27-14 \$8828.81 PAID BY VICKIES L VISSER.
		ON 6-18-14 \$1000.00 RECEIVED FROM CALVIN VISSER.
9:15		EXHIBIT 8 – SECOND PAGE – MY SIGNATURE – SIGNED THE PLAT ON 7-2-14. 2013 WERE PAID BUT 2014 BILLING WERE NOT AVAILABLE YET.
	BF	MOVE TO ADMIT 8, 9, AND 10
	TM	9 WAS ADMITTED. NO OBJECTION TO 8 AND 10.
	J	ADMIT EXHIBITS 8 AND 10.
9:18	TM	CROSS
	CP	EXHIBIT 10: CITES WHO PAID WHAT WHEN AND HOW MUCH.
	BF	REDIRECT
	CP	LAST TWO PAGES – NEXT TO THE LAST PAGE- 2011 PAID BY VICKIES VISSER.
		2010 YEAR PAID

		2009 TAXES PAID BY DOUGLAS L VISSER ON 5-14-13
9:22	TM	RE-CROSS
	CP	2008 TAX YEAR – PAID 2-8-12 BY CALVIN VISSER \$13217.25, IN FORECLOSURE.
9:23	J	WHEN IS 2015 DUE.
	CP	DECEMBER 2015 1 ST HALF AND JUNE 2016 2 ND HALF.
	BF	RE-DIRECT.
	CP	CONFIRMS WHEN TAXES ARE DUE.
9:25		OFF RECORD.
9:26		RESUME
	J	MARKED 10A
		MARKED 10B
		OBJECTION TO ADMISSION?
	TM	NO
	J	ADMIT EXHIBITS 10A AND 10B
	BF	MOVE TO EXCLUDE WITNESSES?
	TM	NO OBJECTION.
	J	OKAY
9:28	CLERK	JEFFERY IKE SWORN.
	BF	DIRECT
	JI	OWN LOANSTAR MORTGAGE. LAST YEAR. MR. VISSER NEEDED A LOAN.
9:29	TM	MOVE TO STRIKE.
	J	DISREGARD LAST STATEMENT.
	JI	LOAN DATED 11-10-14.
		LOAN FROM JOSEPH LAPHAM. THE PAY HISTORY WAS BAD.
	TM	OBJECTION HEARSAY.
	JI	HIGHER RISK. PROPERTY WAS A WRECKING YARD. ENVIRONMENTAL STUDY NOT RECEIVED. A LOAN WAS CLOSED.
9:33		THE LOAN CLOSED 12-31-14. WE LOOKED FOR INVESTORS FOR THE PROPERTY.
		EXHIBIT 5- SETTLEMENT DOCUMENT.
		LOAN AMOUNT \$270,000.00.
		PAGE 1: SETTLEMENT CHARGES.
		PAGE 2: ALL OF THE ITEMS ARE BROKEN DOWN.
		THE FIRST BIG CHARGE IS THE ORIGATION CHARGE.
9:37		WE HAVE ALL OUR PAYMENTS STARTING ON THE 15 TH .
		PAGE 1: \$216,000.17 – PAID OFF LIEN HOLDER.
		LAST PAGE OF EXHIBIT 5 – THE LAPHAM DEBT PAID OFF.
9:39		UTILITIES HAD TO BE PAID.
		\$7900.00 NEEDED TO BE HELD BACK FOR SEWER.
9:40		PONDERAY SEWER – LOT 1 AND LOT 2 WERE NOT SERVICES
	BF	MOVE TO ADMIT EXHIBIT 5
	TM	NO OBJECTION.
	J	EXHIBIT 5 IS ADMITTED.
	JI	EXHIBITS 6 AND 7 ARE A PROMISSORY NOTE AND DEED OF TRUST.
	BF	MOVE TO ADMIT 6 AND 7
	TM	NO OBJECTION
	J	ADMIT EXHIBITS 6 AND 7
9:42	JI	EXHIBIT 7 – DEED OF TRUST. THE SECURITY FOR THE LOAN IS 20 ACRES OF THE PROPERTY. LOT 1 IS WORTH MORE THAT LOT 2, THE ONE ON THE HIGHWAY.
		THE REMAINING \$17,267.94 WAS GIVEN TO DOUG.
9:45	J	QUICK QUESTION.
		THE LOAN IS CURRENTLY TO PAY INTEREST?
	JI	YES.
	BF	RE-DIRECT.

	TM	OBJECTION – HEARSAY- CALLS FOR SPECULATION.
	BF	NOT HEARSAY.
	TM	CLARIFIES.
	J	SUSTAIN
	TM	HEARSAY.
	J	ALLOW.
	JL	WHEN I LOOK AT A PIECE OF PROPERTY – THE FRONT PROPERTY WOULD NOT GO OVER \$600,000.00.
		EXHIBIT 10- PAGE 2
9:49	TM	OBJECTION
	J	HE CAN TELL ME WHAT KIND OF LOAN.
	JL	HARD PRESSED TO GET \$200,000.00. THE AMOUNT OF LATE PAYMENTS RECEIVED. RISK IS HIGH.
9:50	TM	OBJECT.
	J	DOCUMENT SPEAKS FOR ITSELF.
9:51	JL	COULD HAVE FOUND A LENDER FOR HALF THE AMOUNT.
	TM	OBJECT.
	J	SUSTAIN
	BF	THAT IS ALL THE QUESTIONS I HAVE.
	TM	RE-CROSS
	JL	\$700,000.00 TO 800,000.00 IS THE VALUE OF BOTH PROPERTIES.
		ASSESSED VALUE IS \$786,947.00 FOR THE 2 PROPERTIES IN 2013.
	BF	OBJECTION.
	J	OVERRULE.
	TM	NOTHING FURTHER.
9:55	J	CAN GO OUT OF ORDER.
	CLERK	JOSEPH G. LAPHAM SWORN.
	TM	DIRECT
	JL	I WAS THE LENDER ON A LOAN TO DOUG AND VICKIE VISSER AROUND 8 YEARS AGO. IT WAS SECURED BY THE PROPERTY – CAR LOT.
		AGREED TO AN AMENDMENT.
		EXHIBIT A AND B – MODIFICATION OF THE LOAN. SIGNED ON 8-14-13.
		AGREED TO EXTEND THE MATURITY DATE TO 10-12-14.
9:58	BF	OBJECT.
	JL	I NEW THEY ARE DIVORCED.
	BF	OBJECT. – HEARSAY.
	J	OVERRULED.
	BF TM	DISCUSSION
10:01	J	WILL OVERRULE THE OBJECTION.
	JL	DIVIDING THE LOAN DISCUSSED ABOUT A YEAR AGO, WILLING TO DO THAT.
		THE LOAN WAS PAID OFF IN FULL.
10:02		RECEIVED PAYMENTS ON LOAN. WAS NOT PAID OFF BY THE MATURITY DATE. PAID BY MS. VISSER.
	BF	OBJECTION.
		ASK A QUESTION IN AID OF AN OBJECTION.
	JL	PAYMENTS WENT THROUGH ESCROW.
	J	IT IS HEARSAY.
	BF	OBJECTION
	J	OVERRULE
10:04		DID NOT ISSUE A FORECLOSURE. WORKING WITH MS. VISSER TO GET THE LOAN SPLIT.
	TM	MOVE TO ADMIT EXHIBITS A AND B
	BF	NO OBJECTION.
	J	ADMIT EXHIBITS A AND B
10:05	BF	CROSS
	JL	DON'T KNOW WHO ASKED TO SPLIT THE LOAN.

		DON'T KNOW WHEN THE DIVORCE OCCURRED.
10:07		EXHIBIT 19 – HAVEN'T SEEN DOCUMENT.
10:09	TM	OBJECT – DOCUMENT SPEAKS FOR ITSELF.
	BF	I AGREE.
	JL	DON'T KNOW THE ORIGINAL LOAN BALANCE.
		EXHIBIT 1 – NOTICE OF DEFAULT ON THE LOAN DATED 8-14-13. LOAN MODIFIED, IT EXTENDED THE DEADLINE.
10:12		IN MEDIATION IT WAS REQUESTED THAT THE LOAN BE SPLIT – I DON'T REMEMBER THAT.
		THE LOAN AMOUNT WAS INCREASED 6% WITH THE MODIFICATION.
		DOUGLAS PAID \$5000.00 ALSO WITH MODIFICATION.
		IF DEFAULT ON THE LOAN THEN I WOULD TAKE LOT 1 AND IF NOT SATISFIED THEN I WOULD TAKE LOT 2.
10:16		THIS WAS THE LAST MODIFICATION DOCUMENTED I THINK.
10:18		8-29-14 LETTER FROM REX FINNEY TO BRENT FEATHERSTON.
	BF	MOVE TO ADMIT LETTER.
	TM	NO OBJECTION
	J	ADMIT LETTER (EXHIBIT 23)
10:21	JL	TOLD MS. VISSER I WOULD GIVE HER A LOAN FOR HER 5 ACRES. SHE WOULD NEED TO SECURE THE 5 ACRES FOR \$40,000.00. WOULD GIVE HER LOAN ON HER CHARACTER.
	TM	RE-DIRECT.
	JL	MS. VISSER WOULD HAVE TO HAVE TITLE TO THE PROPERTY BEFORE THE LOAN COULD BE GIVEN.
10:22	BF	OBJECT – HEARSAY.
	TM	RELEVANT. EXPLAINS.
10:24	BF	ARGUMENT.
	TM	ARGUMENT.
10:27	J	OVERRIDE. I NEED TO ENFORCE THE JUDGMENT. PARAGRAPHS 5 AND 6 OF JUDGMENT TALKS ABOUT SPLITTING THE NOTE.
	TM	CONTINUE RE-DIRECT
	BF	OBJECT
	J	SUSTAIN
	JL	MARGARET WILLIAMS, REX FINNEY, MYSELF, MR. FEATHERSTON, MR. VISSER, NOT SURE OF MS. VISSER AT A MEETING ABOUT SPLITTING THE DEBT. TALK WAS ABOUT LOTS. THE PARCEL WOULD BE SPLIT AND A ROAD NEEDED TO BE PUT IN TO MS. VISSER'S PROPERTY, THE BACK PART. MR. VISSER WOULD HAVE THE FRONT PROPERTY.
	BF	OBJECT.
	J	NEED TO WAIT FOR ANOTHER QUESTION.
	BF	OBJECTION.
	J	HE SAID NO.
10:31	BF	RE-CROSS
	JL	EXHIBIT B- DISCUSSED.
	BF	NOTHING FURTHER.
	CLERK	1 AND 19 NOT ADMITTED.
	BF	MOVE TO ADMIT.
	TM	OBJECT
	J	WILL ADMIT EXHIBITS 1 AND 19.
	CLERK	CITES WHAT WAS ADMITTED.
10:36		OFF RECORD
11:00		RESUME
	CLERK	JACKIE FUQUA SWORN
	BF	DIRECT
	JF	MANAGER AT PANHANDLE ESCROW. HAVE THE CONTRACT BETWEEN MR. LAPHAM AND THE VISSERS. ORIGINAL NOTE SIGNED ON 9-2-5 WAS FOR

		\$111,500.00. THERE ARE 7 MODIFICATIONS – THEY CHANGED THE DUE DATES. THE LAST MODIFICATION IS 2-13-14.
11:04		EXHIBIT 3 – LETTER FROM MR. FINNEY. – THE LAST MODIFICATION ADJUSTED THE AMOUNT OWED. NO RECORD THAT MS. VISSER PAID THE LOAN, THE TITLE COMPANY PAID THE LOAN. THE LOAN PAID OFF ON 12-13-14. NOTICE OF DEFAULT DATED 10-14-14, IT WAS SENT TO MR. AND MRS. VISSER. IT WAS SENT CERTIFIED MAIL, NOT SURE WHO RECEIVED IT.
		BALANCE PAID OFF WAS \$211,267.14.
11:12		EXHIBIT – PAYMENTS MADE BY MR. FEATHERSTON'S TRUST ACCOUNT IN LATE 2013 AND EARLY 2014. DISCUSSED TWO CHECKS RECEIVED BY MS. VISSER.
		A CHECK FOR \$80,000.00 FROM MS. VISSER.
	BF	MOVE TO ADMIT EXHIBIT 20
	TM	NO OBJECTION
	J	ADMIT EXHIBIT 20
	JF	EXHIBITS 21 AND 22 – CREATED A FICTITIOUS ACCOUNT REQUESTED BY YOU (MR. FEATHERSTON).
11:17		EXHIBIT 21 – PAYOFF AMOUNT. FICTITIOUS.
11:18	TM	OBJECTION- DON'T KNOW WHAT CHECKS YOU ARE TALKING ABOUT.
	JF	EXHIBIT 21 – CONTINUE GOING OVER THE AMOUNTS.
	BF	MOVE TO ADMIT 21
	TM	NO OBJECTION.
	J	ADMIT EXHIBIT 21
	JF	EXHIBIT 22- ANOTHER FICTITIOUS ACCOUNT- NUMBERS DISCUSSED.
	BF	MOVE TO ADMIT EXHIBIT 22
	TM	NO OBJECTION.
	J	ADMIT EXHIBIT 22
	JF	EXHIBIT 22- CONTINUE DISCUSSION OF NUMBERS.
11:27		EXHIBIT 3 – CITES PAYMENTS MADE – DOES NOT SHOW THE SOURCE OF THE PAYMENTS.
11:29		NO COMMUNICATION WITH VICKI OR CALVIN VISSER. AUGUST OF 2013 DOUG VISSER CALLED.
11:32	TM	CROSS
	JF	DID NOT SEE ATTORNEYS REQUEST A PAYOFF. THE HISTORY OF PAYMENTS ARE NOT ALL IN THE FICTITIOUS HISTORY.
		EXHIBIT C – LEDGER PROVIDED BY PANHANDLE ESCROW.
	TM	MOVE TO ADMIT EXHIBIT C
	BF	NO OBJECTION
	J	ADMIT EXHIBIT C
	JF	ON 2-13-14 A \$7000.00 PAYMENT WAS MADE BY MR. FEATHERSTON DON'T KNOW WHO MADE THE PAYMENT TO HIM. DIDN'T KNOW YOUR CLIENT WAS MAKING PAYMENTS THROUGH MR. FEATHERSTON UNTIL I RECEIVED THE AGREEMENT.
11:37		OCTOBER 2013 PAYMENTS – \$7500.00 AND \$2500.00.
		EXHIBIT D- LETTER FROM MR. FEATHERSTON TO REX FINNEY AND MARGARET WILLIAMS. – DIVISION OF DEBT.
	TM	MOVE TO ADMIT EXHIBIT D
	BF	OBJECT. NOT A COMPLETE DOCUMENT.
	J	CAN WE SUBSTITUTE THAT.
11:41		OFF RECORD
11:41		RESUME
	J	PLAINTIFF'S 4 IS A COMPLETE COPY OF EXHIBIT D
	TM	NO OBJECTION.
	J	WITHDRAW D AND ADMIT EXHIBIT 4?
	TM BF	YES
	J	ADMIT EXHIBIT 4

	CLERK	THE ONLY THING NOT ADMITTED IS EXHIBIT 3
	BF	ADMIT EXHIBIT 3
	J	ATTACHED TO EXHIBIT B
	TM	NO OBJECTION
	J	ADMIT EXHIBIT 3
	CLERK	EXHIBIT 2 HAS NOT BEEN ADMITTED.
	J	EXHIBIT B IS THE SAME AS EXHIBIT 2
11:47		OFF RECORD.
1:00		RESUME
	BF	MR. FINNEY WILL BE LATE, HE IS OUR NEXT WITNESS.
1:01		OFF RECORD
1:14		RESUME
	CLERK	REX FINNEY SWORN.
	BF	DIRECT
	RF	IN 2013 REPRESENTED MR. LAPHAM AGAINST THE VISSERS.
		EXHIBIT 4- LETTER FROM YOUR OFFICE TO MY OFFICE.
		EXHIBIT 23- LETTER FROM ME TO BRENT FEATHERSTON.
		ALSO ANOTHER LETTER.
		NOVEMBER 11 TH I TALKED TO YOU REGARDING AN EXTENSION OF TIME.
		8-29-14: FOLLOW-UP EMAIL.
		11-11-14: LEFT A VOICE MAIL TO YOU.
		TALKED ABOUT FORECLOSURE.
1:19	TM	CROSS
	RF	BROUGHT EMAIL AND TELEPHONE MESSAGE FROM BRENT FEATHERSTON.
		ONLY THING I BROUGHT.
		THE PHONE MESSAGE TAKEN BY CHRIS EVERLEY IN MY OFFICE.
1:21	BF	OBJECT.
	J	SUSTAIN
	RF	CITES MESSAGE.
	BF	OBJECT
	TM	AN AGENT OF THAT WITNESS.
	J	OVERRIDE.
	RF	JOE LAPHAM WAS GOING TO LOAN VICKI MONEY. HE WANTED TO ASSIST VICKI, IT DIDN'T HAPPEN BECAUSE DOUG PAID OFF THE LOAN.
		SPLITTING THE DEBT CAME UP IN CONVERSATION AT BRENT FEATHERSTON'S OFFICE.
		8-29-14 WAS THE DATE OF THE EMAIL.
	TM	MOVE TO ADMIT Y AND Z
	BF	NO OBJECTION
	J	ADMIT EXHIBITS Y AND Z
1:26	BF	REDIRECT
	RF	NO PAGE 5
		PAGE 5 ON EXHIBIT B
		AFTER THE AMENDMENT WAS DONE- MR. FEATHERSTON AND HIS CLIENT DIDN'T UNDERSTAND WHY THE AMOUNT WAS HIGHER.
1:32		DID NOT RECEIVE ANY RESPONSE FROM MARGARET WILLIAMS OR HER CLIENT REGARDING YOUR LETTER. JOE IS MARGARET'S UNCLE.
	BF TM	NOTHING FURTHER.
	CLERK	VICKIE LYNN VISSER SWORN
	BF	DIRECT
	VV	EXHIBIT 4- MARGARET WILLIAMS OR I DID NOT WRITE A RESPONSE TO YOUR LETTER.
		EXHIBIT 17- JUDGMENT ENTERED IN THIS CASE.
		PAGE 4 OF THE JUDGMENT. BOTTOM OF PAGE 3.
		WHEN I RECEIVED YOUR LETTER I HAD NOT PAID THE SUM.
		EXHIBIT 17 – ON TOP OF PAGE 3 – PARAGRAPH 2.

1:40	TM	OBJECT.
	BF	I WILL ASK ANOTHER QUESTION.
	VV	MADE A PAYMENT AT THE TREASURERS, IT WAS A \$1000.00 SHORT, SO THE TREASURERS CALLED YOUR OFFICE.
	BF	OBJECT.
	J	OVERRIDE.
	VV	OCT, NOV, DEC PAID THROUGH FEATHERSTON OFFICE. THE JANUARY PAYMENT WAS MADE AT THE TREASURERS.
	TM	OBJECT.
	J	OVERRIDE.
	TM	OBJECTION – NO QUESTION.
	J	MOVE ON.
	TM	OBJECT. JUDGMENT SAYS TO PAY TAXES UP TO 2013.
	BF	IF SHE CLAIMS SHE OWNS PROPERTY SHE SHOULD PAY TAXES
	TM	COMMENTS.
	J	SUSTAIN
1:44	VV	PAID \$50,000.00 IN MARCH OR FEBRUARY 2014. THAT IS TO BE APPLIED TO VICKIE'S PORTION OF THE LAPHAM DEBT. I PAID \$30,000.00 MORE. COULDN'T CRUSH ANYMORE.
		IN JUNE I TALKED TO JOE LAPHAM TO SEE IF HE COULD GIVE ME THE REMAINING BALANCE.
		I STOPPED BY PANHANDLE TO FIND OUT WHAT WAS OWED, THEY NEVER GAVE ME A FIGURE. THEY SAID THEY WERE COMMUNICATING THROUGH THE ATTORNEYS.
		AUGUST 27 TH LETTER. – DON'T KNOW IF MARGARET COMMUNICATED WITH YOU.
1:50		MAY 2014- A HEARING
	J	MAY 21, 2014 WAS THE HEARING. ALSO ON 4-23-14.
	VV	DOUG ALLOWED ME TO BRING IN A CRUSHER.
		EXHIBIT 12- AERIAL PHOTO OF SITE. THE ROAD FROM THE HIGHWAY LEADING TO THE BACK PROPERTY.
1:53	TM	OBJECT.
	BF	WILL NOT TAKE LONG.
	J	ALLOW
	VV	CITES HOW SHE IS GAINING ACCESS TO THE BACK PROPERTY. (MARKING WITH RED PEN.)
1:56	TM	MOVE TO STRIKE.
	BF	SHE WAS TO VACATE THE PROPERTY ON 4-30-15. THERE IS STILL ENCROACHMENT.
	J	OVERRIDE.
	VV	JUDGMENT PAGE 4 – PARAGRAPH 5. (READS PARAGRAPH)
2:00		PAGE 5 OF THE JUDGMENT – THE CRUSHING FUNDS WERE NOT PAID TO YOUR (BRENT FEATHERSTON) TRUST ACCOUNT.
		THE PROPERTY WAS RESTORED.
		THE REPORT IS THE REPORT I GAVE TO YOUR OFFICE.
	TM	OBJECT.
2:05	BF	SHE IS RESPONSIBLE FOR THE REMEDIATION.
	TM	CONDITION IS SUPPOSE TO BE LIKE 8-1-13.
	J	WILL LET HER ANSWER.
	BF	WANT TO BE CLEAR THEY ARE LIABLE FOR THE CLEAN UP.
		MOVE TO ADMIT EXHIBIT 11.
	TM	OBJECT.
	J	ADMIT EXHIBIT 11 - NOT ACCEPTING EVERYTHING IN THE REPORT.
	VV	TALKS ABOUT THE REPORT.
2:12		MARGARET TALKED TO ME.
		CLEANED UP THE DARK DIRT BY THE WAREHOUSE. HAD THE WHOLE

		PROPERTY LEVELED. ALL WEST PERSON THAT WROTE UP THE REPORT SAID WHAT NEEDED TO BE CLEANED AND I DID IT. HE SAID HE WOULD NOT DO A FOLLOW-UP REPORT ONCE COMPLETED.
2:16	TM	OBJECT.
	J	SHE CAN SAY WHAT SHE KNOWS.
	VV	CITES WHAT SHE KNOWS.
2:18	TM	OBJECT.
	J	IT SAYS IT IN THE REPORT.
	TM	SORRY JUDGE.
	VV	IN '99 HE WALKED WITH ME TO IDENTIFY THE SPILLS AND HE CAME BACK.
2:21	TM	OBJECT. FINAL REPORT IS NOT RELEVANT.
	J	RESTORATION IS RELEVANT.
	VV	AFTER 2007 I WAS OPERATING AUTO ALLEY ALONG WITH MY SON. MR. VISSER ONLY LIVED ON THE PROPERTY. HE BROUGHT IN JUNK VEHICLES IN 2008.
		TO THE BEST OF MY KNOWLEDGE I CLEANED UP THE PROPERTY. THE PROPERTY WAS LEVELED WITH A DOZER. TOOK THE TOP LEVEL. AROUND THE BUILDINGS I USED A SHOVEL AND PUT SOIL IN A BAG OR A BARREL. I TOOK THE SOIL TO THE CRUSHING VEHICLE.
		ALL WEST DOESN'T TELL US HOW TO REMOVE SOIL.
2:28	J	THEY REMOVED THE TOP SOIL?
	VV	THEY PUT IT IN A PILE AND DOUG SAID TO SPREAD IT BACK OUT SO THEY DID.
2:30		CITES AGREEMENTS FOR PAYMENT.
2:33	TM	A RULE OF COMPLETENESS.
	J	CAN DO THAT AT CROSS.
	VV	DID NOT PAY ALL THE DEBT.
	TM	OBJECTION.
	BF	PARAGRAPH
	J	YOU MIGHT BE THINKING ON THE JUDGMENT FOR THE WRIT OF POSSESSION.
	VV	WAS SUPPOSE TO PAY \$5000.00 RENT AFTER THE DAY I WAS TO MOVE OUT.
2:38		END

**FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF BONNER
215 S. FIRST AVENUE
SANDPOINT, IDAHO 83864**

ST. JOSEPH IDAHO
CLERK OF DISTRICT COURT
2015 MAY 23 P 2:58

CLERK DISTRICT COURT

Douglas Visser

vs.

Auto Alley, LLC, etal.

Case No: **CV-2013-0001045**

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Evidentiary on Contempt
Judge:

Friday, May 29, 2015
Barbara A. Buchanan

09:00 AM

Motion for Writ of Possession
and Judgment of Quiet Title
Judge:

Friday, May 29, 2015
Barbara A. Buchanan

09:00 AM

Additional Presiding Judges: Charles W. Hosack, John P. Luster, John T. Mitchell,
Fred M. Gibler, Steven Verby, George Reinhardt, III, Jeff Brudie, Lansing Haynes,
Benjamin R Simpson, Carl Kerrick, Michael Griffin, John Stegner, Barbara Buchanan,
Richard Christensen, Jay Gaskill, Cynthia K.C. Meyer

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court
and on file in this office. I further certify that copies of this Notice were served as follows on Thursday,
May 28, 2015.

BRENT FEATHERSTON
ATTORNEY AT LAW
113 S. SECOND
SANDPOINT ID 83864

_____ Mailed _____ Hand Delivered ☒ Faxed

D. TOBY MCLAUGHLIN
ATTORNEY AT LAW
414 CHURCH ST STE 203
SANDPOINT ID 83864

_____ Mailed _____ Hand Delivered ☒ Faxed

Dated: May 28th, 2015
Michael W. Rosedale
Clerk Of The District Court

By: _____

Deputy Clerk

326

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

COURT MINUTES

JUDGE:	BARBARA BUCHANAN	CASE NO.	CV-2013-1045	
REPORTER:	VAL LARSON	DATE:	5-29-15	TIME: 9:00 A.M.
CLERK:	LINDA OPPELT	COURTROOM	1+	
DIVISION:	DISTRICT			

DOUGLAS VISSER

vs AUTO ALLEY, LLC, ETAL.

Plaintiff / Petitioner

Defendant / Respondent

Atty: BRENT FEATHERSTON

Atty: D. TOBY MCLAUGHLIN

SUBJECT OF PROCEEDINGS

**MOTION FOR WRIT OF POSSESSION AND JUDGMENT OF QUIET
TITLE; EVIDENTIARY**

INDEX	SPEAKER	PHASE OF CASE
9:11	J	Calls Case
		Present: BRENT FEATHERSTON, TOBY MCLAUGHLIN
	CLERK	MARGARET WILLIAMS SWORN
	TM	DIRECT
	MW	I REPRESENT VICKI AND CALVIN AND AUTO ALLEY. I WAS INVOLVED WITH MEDIATION AND NEGOTIATIONS.
		EXHIBIT 17 – COPY OF THE JUDGMENT.
		PAGE 4 – PARAGRAPH 5 – MIDDLE OF THE PARAGRAPH. IN JUNE MY CLIENT CRUSHED THE VEHICLES AND MADE \$80,000.00. SHE WAS SHORT ON THE DEBT. WE MET WITH MR. FEATHERSTON. WE CAME UP WITH A FAIR AMOUNT REGARDING THE DIVISION OF THE DEBT. SHE WAS AROUND \$29,000.00 SHORT. WE HAD A LENDER, JOE LAPHAM, TO LOAN HER MONEY.
		MR. FEATHERSTON'S CLIENT WAS GOING TO CONTEST THE AMOUNT OWED TO MR. LAPHAM. I TOLD HIM TO LET ME KNOW HOW MUCH WAS OWED.
		EXHIBIT 4 – \$109,864.72 WAS THE TOTAL AMOUNT OWED.
9:17		DIDN'T KNOW THE PROPERTY WAS BEING REFINANCED UNTIL THE FIRST PART OF JANUARY.
	BF	OBJECT.
	J	SHE CAN ANSWER.
	MW	EXHIBIT 17 – PARAGRAPH 3 – DISCUSSES PAYMENT AMOUNT OF \$3500.00 UNTIL 3-31-14, \$2500.00 OF THAT WAS TO BE APPLIED TO THE MORTGAGE.
9:19	BF	OBJECT.
	J	SUSTAIN – ABOUT WHAT MR. FEATHERSTON WAS THINKING.
		BUT SHE CAN TESTIFY ABOUT HER UNDERSTANDING.
	MW	A BALLOON PAYMENT OF \$50,000.00 MADE BY VICKI. THE MONTHLY WAS TO BE PAID ON WHO THE DEBT WAS OWED.
	BF	OBJECTION
	J	OVERRULED.
	MW	THE MONTHLY PAYMENT WAS NOT TO BE PAID TO DOUG VISSER.
	BF	OBJECT TO FOUNDATION.
	J	NEED FOUNDATION.
9:23	MW	MET JUNE AND JULY AND HAD PHONE CONVERSATIONS WITH MR. FEATHERSTON. AFTER MEETINGS WITH MR. FINNEY AND MR. LAPHAM WE DISCUSSED THE DEED.

		EXHIBIT 4 – THE PLAT WAS DONE, SHE PAID FOR IT.
		NOTHING IN JUDGMENT THAT VICKI WAS TO CONSTRUCT A ROAD.
9:26	BF	OBJECT.
	J	OVERRULE.
	MW	NOTHING IN THE JUDGMENT THAT SAYS VICKI NEEDS TO REMEDIATE THE PROPERTY.
	TM	CONTINUES TO GO OVER EXHIBIT 4
	MW	ANSWERS WHAT IS AND IS NOT IN THE JUDGMENT.
9:28	BF	OBJECT.
	J	SUSTAIN
9:28	BF	CROSS
	MW	EXHIBIT 4 – DID NOT ANSWER YOUR LETTER IN WRITING BUT HAD DISCUSSION.
	TM	ASKED AND ANSWERED.
	MW	YOUR CLIENT HAD AN ISSUE WITH AMOUNT OWED, VICKI WANTED A NUMBER.
		EXHIBIT 25- EMAIL ABOUT WHAT BALANCE IS OWED. ASKED TO MEET ON 8-25-14, WE MET WITH MR. LAPHAM AND MR. FINNEY. INTEREST HAD BEEN ACCRUING.
9:34		I NEVER SAW A NOTICE OF DEFAULT. YOU MAY HAVE CALLED ME REGARDING FORECLOSURE.
9:35		YOUR CLIENT KEEPS RAISING NEW ISSUES.
		PRIVACY FENCE WANTED BY MY CLIENT IN THE FUTURE.
		YOU ARE GOING TO HOLD THE QUIT CLAIM DEED.
9:38	TM	ARGUMENTATIVE
	J	MOVE ON ARGUMENTATIVE.
	MW	WE TALKED TO PANHANDLE TO GET PAY OFF.
		EXHIBIT 17- PAGE 2 PARAGRAPH A – READS PARAGRAPH.
		AUGUST 27 TO DECEMBER 31 – SHE HAD SECURE FINANCING. NO DOCUMENTATION I TOLD YOU THAT NUMEROUS TIMES.
9:41		I DID NOT TALK TO PANHANDLE. I KNEW INTEREST WAS ACCRUING.
9:42	BF	MOVE TO ADMIT EXHIBIT 25
	TM	HAVEN'T SEEN IT. MAY I?
	J	YES
	TM	NO OBJECTION
	J	EXHIBIT 25 ADMITTED.
	MW	MY CLIENT HAD TO RESTORE PROPERTY TO THE AUGUST DATE.
		BROUGHT IN GRAVEL NOT SURE WHEN.
		DAMAGE TO THE BUILDING WAS DONE BY PRIOR RESIDENTS NOT BY MY CLIENT.
		NO WRITTEN RESPONSE TO YOUR AUGUST 27 LETTER.
9:47		WE HAD A CONVERSATION IN SEPTEMBER. DID NOT BRING MY NOTES.
	BF	THAT IS ALL I HAVE.
	TM	NOTHING ELSE.
9:49		OFF RECORD
9:53		RESUME
	CLERK	VICKI VISSER SWORN
	BF	DIRECT
	VV	I WAS NOT MOVED OUT BY 4-30-14. DOUG LEFT PERSONAL ITEMS IN THE BUILDING AND HE LOCKED THE BUILDING AND WE HAD ITEMS IN THE BUILDING.
		EXHIBIT 26- SHOWS THE BUILDINGS ON LOT 1 AND SOME OF THE EQUIPMENT. THE BED OF THE TRUCK WAS NOT UP AGAINST THE BUILDING.
	BF	MOVE TO ADMIT EXHIBIT 26
	TM	LACK OF FOUNDATION.

	VV	SECOND PAGE – SOME OF THE PLACES ON LOT 1. THE CONDITION IN APRIL.
	BF	MOVE TO ADMIT
	TM	NO OBJECTION
	J	EXHIBIT 26 ADMITTED.
10:00	VV	EXHIBIT 16 – PHOTOS. THE DAMAGE SHOULD HAVE NOT BEEN MADE BY THE CLEAN UP.
		BUILDING WITH BROWN SIDING. DAMAGE ON BUILDING.
	BF	MOVE TO ADMIT 16
	TM	NO OBJECTION
	J	ADMIT EXHIBIT 16
	VV	DAMAGE WAS DONE BY PRIOR TENANT AFTER LOOKING AT PHOTOS.
10:05		WE WERE MOVED OUT BY MAY.
		APRIL 23 HEARING. I DON'T KNOW IF ANYMORE WORK PERFORMED AFTER THAT HEARING.
10:07		UNDERSTAND I AM RESPONSIBLE FOR DAMAGES AND CLEAN UP.
	TM	OBJECTION.
	BF	I WILL MOVE ON.
	VV	THE SPILL AREA I CLEANED UP WAS THERE BEFORE THE MEDIATION DATE.
10:11	BF	PHASE 2 REPORT – SECTION 11 – CITES.
	VV	I DON'T BELIEVE I AM RESPONSIBLE TO GET A PHASE 2 REPORT.
	TM	OBJECTION.
	J	SHE CAN ANSWER.
	VV	I DON'T KNOW IF SOMEONE ELSE BUYS THE PLACE IF THERE WOULD BE PROBLEMS.
10:13		HE (MR. VISSER) SAID THERE WAS A BUYER FROM CALIFORNIA, HE ENDED UP BUYING IN SPOKANE BUT HE REALLY LIKED THE PROPERTY. DOUG WANTED TO GIVE ME \$200,000.00 BUT I DIDN'T WANT TO SELL.
10:15	TM	CROSS
	VV	DIVORCED IN 2005. WENT TO MEDIATION AND REACHED A MEDIATED SETTLEMENT AGREEMENT.
		EXHIBIT E- MEDIATED SETTLEMENT AGREEMENT.
	TM	MOVE TO ADMIT DEFENDANT'S E
	BF	NO OBJECTION, EXCEPT WERE IT DEVIATES FROM THE JUDGMENT.
	TM	JUDGMENT IS AMBIGUOUS.
	BF	OBJECT
10:18	J	WILL ADMIT EXHIBIT E
	VV	EXHIBIT G – PARAGRAPH 2 – ENTERED 5-5-14. READS PARAGRAPH.
		PAID THE \$5000.00. I DON'T SEE THAT I HAVE TO PAY \$5000.00 IF I DON'T MOVE OUT.
	TM	PAGE 3 PARAGRAPH G- READS.
	VV	I PAID \$5000.00 RENT, MR. FEATHERSTON'S ATTORNEY'S FEES, I VACATED THE PROPERTY ON 4-30-14, I DID A SITE ASSESSMENT (PHASE 1).
		I HAVE MET ALL THE REQUIREMENTS.
10:24		PARAGRAPH A OF THE MEDIATED SETTLEMENT AGREEMENT.
		I HAVE NEVER RECEIVED TITLE OF LOT 2.
		I PAID \$2000.00 TO REPLAT PROPERTY.
10:25	BF	OBJECTION.
	TM	MEDIATED SETTLEMENT AGREEMENT IS RELEVANT.
	J	THE ISSUE BEFORE THE COURT IS THE JUDGMENT. THAT IS WHAT I NEED TO ENFORCE.
10:27		JUDGMENT (EXHIBIT 17) – PAID ALL THE BACK TAXES.
	BF	ASKED AND ANSWERED.
	J	EACH SIDE CAN ASK
	BF	WITHDRAW
	VV	EXHIBIT I- PAID OVER \$40,000.00 IN BACK TAXES FOR LOT 1 AND LOT 2.

		EXHIBIT H – SHOWS PAYMENTS I MADE.
10:30	BF	OBJECT.
	TM	EXPLAINS A FORFEITURE CLAUSE.
10:31	BF	A FORFEITURE IS NEW ONLY BEING RAISED FOR THE FIRST TIME. IF WE TALK ABOUT THIS THEN WE NEED TO DISCUSS THE AMOUNT OF RENT NOT PAID OVER THE YEARS BY MS. VISSER.
10:33	J	IT HAS ALREADY COME IN. SHOWS SHE HAS PAID THE TAXES. UNDERSTAND ARGUMENT BUT WILL OVERRULE.
10:34	VV	SINCE OCTOBER I HAVE PAID \$45,418.77 IN TAXES
	TM	MOVE TO ADMIT EXHIBIT I
	BF	NO OBJECTION.
	J	ADMIT EXHIBIT I
	VV	MADE PAYMENTS TO THE FEATHERSTON OFFICE. THEY WERE SUPPOSE TO PAY THE LAPHAM DEBT DOWN.
	BF	OBJECTION.
	J	OVERRULED
	VV	HAD PROBLEM WITH A DECEMBER PAYMENT. MADE A PAYMENT OF \$3500.00, ONLY \$2500.00 WAS TO BE PAID TO LAPHAM AND \$1000.00 TO TAXES.
		PAYMENTS FROM FEATHERSTON WERE SLOW. I DIDN'T KNOW IF I ACCRUED FEES.
	BF	OBJECTION
	J	SUSTAIN SHE DOESN'T KNOW.
10:38	VV	JUDGMENT (EXHIBIT 17) – I THOUGHT MY PAYMENTS WERE SUPPOSE TO GO TO MY PART OF THE DEBT.
	BF	OBJECT – ARGUMENT.
	TM	THE MODIFICATION JUST EXTENDED THE DUE DATE.
10:41	BF	2 MODIFICATIONS. THE JULY ONE IS CLEAR.
	J	OVERRULE THE OBJECTION. SHE CAN TESTIFY TO WHAT SHE KNOWS.
	VV	THOUGHT I COULD USE LOT 2 AS COLLATERAL.
	BF	OBJECT – HEARSAY.
	J	OVERRULE
	VV	I THOUGHT I HAD SECURE FINANCING TO PAY OFF THE DEBT. DOUG WOULD NOT AGREE TO GIVE UP THE DEED WHEN I WENT TO GET FINANCING. I TALKED TO DOUG TO IN NOVEMBER
	BF	OBJECT
	J	OVERRULE.
	VV	HE WOULD ONLY GIVE ME THE DEED IF I BUILT THE ROAD.
10:45		EXHIBIT H- PAID \$149,000.00 TOWARDS THE LAPHAM DEBT.
10:46		OFF RECORD
11:08		RESUME
	J	RETAKE THE STAND MS. VISSER.
	TM	CONTINUE CROSS
	VV	NEVER TOLD TO ME THAT MY PAYMENTS WERE FOR DOUG'S DEBT.
	BF	OBJECT.
	J	ALREADY GONE INTO THIS.
	VV	MADE THE \$1000.00 TAX PAYMENT BEFORE THE PLAT COULD BE DONE.
		MR. VISSER DID NOT TELL ME THAT THE PROPERTY WAS BEING REFINANCED. THE AMOUNT OWED BY ME WAS \$30,000.00 BEFORE THE REFINANCE.
	BF	OBJECTION
	J	OVERRULE
	BF	OBJECTION
	J	GO AHEAD AND ANSWER.
	BF	OBJECTION

	J	SUSTAIN
	TM	WILL MOVE ON.
	VV	THE RESTRAINING ORDER WAS LIFTED SO I COULD CRUSH.
11:15		\$50,000.00 WENT TO MR. FEATHERSTON
		\$80,000.00 WENT TO ESCROW
		RESTORED THE PROPERTY TO THE WAY THE PROPERTY WAS ON 8-15-13.
		CITES WHAT WAS DONE.
11:19	BF	OBJECTION
	J	OVERRULED
	VV	CITES EXPENSES INCURRED WHEN I CLEANED THE PROPERTY.
11:21		DID NOT DO ANY DAMAGE TO THE PROPERTY, NO ONE WORKING WITH ME
		DID DAMAGE TO THE PROPERTY.
		\$2400.00 PAID FOR THE PHASE 1.
		PAID TO HAVE A SURVEY DONE. PAID AROUND \$500.00.
		HAVE NOT CONSTRUCTED THE ROAD. NEED THE DEED AND COME UP WITH
		\$40,000.00.
	TM	MOVE TO ADMIT EXHIBIT H
	BF	OBJECT
11:25	J	EXHIBIT H ADMITTED.
	VV	CURRENTLY WORK AND LIVE ON LOT 2.
	BF	OBJECTION
	J	ALLOW TESTIMONY.
	VV	IF I GET KICKED OUT I WILL HAVE NO PLACE TO LIVE AND NO EMPLOYMENT.
11:27	BF	RE-DIRECT
	VV	I LIVE ON LOT 2 AND DOUG LIVES ON LOT 1.
11:29	TM	NOT A QUESTION
	J	SHE CAN ANSWER QUESTION.
	VV	I DON'T KNOW WHAT WOULD HAVE HAPPENED.
		I CRUSHED 2 TIMES.
11:31	TM	OBJECTION.
	J	I AGREE.
		I DON'T UNDERSTAND WHAT HAPPENED BETWEEN 2005 AND 2013.
11:33		OVERRULE. NEED A LITTLE BIT OF HISTORY.
		2006-2014 LIVED ON LOTS 1 AND 2. MR. LAPHAM USED THE HOUSE ONLY. I
		WAS TO PAY RENT. I PAID RENT. IT WAS NOT MY RESPONSIBILITY TO PAY
		THE TAXES. I PAID 2009 TAXES SO THE PROPERTY WOULDN'T GO INTO
		DEFAULT AND DOUG DID NOT HAVE THE MONEY.
11:38		DURING MEDIATION KNEW THAT DEFAULT WAS GOING TO HAPPEN.
		\$1000.00 WAS NOT PAID
11:42		EXHIBIT 27 – 12-5-13:
	TM	CAN I APPROACH I HAVEN'T SEEN DOCUMENT.
		IS THIS ALREADY IN THE RECORD.
	J	EXHIBIT C 2-13-14.
	TM	OBJECT – HEARSAY.
	J	OVERRULE.
	VV	\$2400.00 PAID (LATE PAYMENT INCLUDED)
		EXHIBIT 28- HAVEN'T SEEN. DATE IS 12-5-14.
	BF	MOVE TO ADMIT 27 AND 28
	TM	NO OBJECTION.
	J	ADMIT EXHIBIT 27 AND 28.
	VV	EXHIBIT 29 – MUST BE THE PROPERTY, IT SAYS VISSER PROPERTY. LETTER
		IS ADDRESSED TO CHERYL PIEHL FOR \$2000.00.
	BF	MOVE TO ADMIT 29
	TM	NO OBJECTION
	J	EXHIBIT 29 ADMITTED.

	VV	STILL MISSING THE \$1000.00
11:50		EXHIBIT 15 – PHOTOS – INSIDE THE BUILDING. CONDITION THE PROPERTY IN APRIL
	BF	MOVE TO ADMIT 15
	TM	NO OBJECTION.
	J	ADMIT EXHIBIT 15
	VV	NO SURVEY NEEDED PER THE JUDGMENT.
11:53		PAGE 17 OF THE JUDGMENT – THE PLAT.
		WE USE THE ROAD THROUGH LOT 1 AND THE NEIGHBORS ROADS TO GET TO LOT 2.
	TM	OBJECTION.
	VV	EXHIBIT 30- NEVER SEEN THIS LETTER BEFORE.
11:57	TM	RE-CROSS
	VV	EXHIBIT 27, 28 AND 29 -
	J	1-27-14 MADE TAX PAYMENT.
		FIRST NOTIFIED OF \$1000.00 MORE DUE WHEN I WENT INTO PAY THE 42,000.00. I ULTIMATELY PAID THE \$1000.00.
12:00		THE JUDGMENT DOES NOT INDICATE RENT PAYMENTS.
	J	I FULLY UNDERSTAND BOTH SIDES.
12:01		OFF RECORD
1:22		RESUME
	CLERK	DOUG VISSER SWORN
	BF	DIRECT
	DV	DIVORCED IN FEBRUARY 2005, WAS NOT LIVING WITH VICKI. IS WAS NOT A WRECKING YARD. THE PREVIOUS RENTER HAD A SPILL AND HE DISSOLVED HIS BUSINESS AND LEFT. THE CLEAN UP WAS THE RESPONSIBILITY OF THE STATE. 2006-2007 THE PROPERTY WAS CLEANED UP. SPRING 2005-2006 THE PROPERTY BECAME A WRECKING YARD AGAIN. MY SON, CALVIN, WAS UNEMPLOYED AND I SAID WHY DON'T YOU START A WRECKING YARD. ANOTHER YOUNG FELLOW WAS HELPING THAT DIDN'T LAST LONG SO VICKI CAME FROM SPOKANE TO HELP CALVIN. THEY LIVED ON LOT 2.
		VICKI ASKED TO USE THE WAREHOUSE. THE AGREEMENT WAS FOR HER TO PAY THE TAXES, PAY THE INTEREST ON THE NOTE (AROUND \$100,000.00), THERE WOULD BE NO INVENTORY ON THE FRONT OF THE PROPERTY, I WANTED TO KEEP PROPERTY CLEAN.
	BF	ADMIT EXHIBIT 12
	TM	NO OBJECTION
	J	ADMIT EXHIBIT 12
	DV	EXHIBIT 12: WAREHOUSE MARKED WITH PINK HIGHLIGHTER. SHOP IS MARKED WITH AN "X". THE OTHER SHOP WAS TO BE USED FOR BODY WORK, THAT DIDN'T WORK.
1:33		THEY DID NOT PAY THE INTEREST ON THE NOTE. THEY DIDN'T PAY THE TAXES. I MENTIONED TO VICKI THAT WE WERE BEHIND IN TAXES. THE RESIDENCE IS OCCUPIED BY ME. I SHARED THE HOUSE WITH CALVIN UNTIL 2013 WHEN THE LAWSUIT STARTED.
1:35	BF	OBJECTION.
	J	HE ANSWERED.
	DV	MULTIPLE MAIL BOXES, THE POSTMAN PUTS THE MAIL ALL IN ONE.
		I AM REMARRIED IN SEPTEMBER 2012. SHE MOVED IN MAY 2012.
		I LEARNED IN THE MIDDLE OF MAY THAT THE TAXES WERE IN ARREARS. I TALKED TO VICKI AND CALVIN. I UNDERSTOOD THE TAXES WERE TO BE PAID IMMEDIATELY.
1:39		MR. LAPHAM FILED A DEFAULT NOTICE, CALVIN GAVE IT TO ME. – EXHIBIT 1.
		I HAD TO PAY MR. LAPHAM A FEE TO MODIFY THE NOTE, IT WAS \$5000.00.
1:41	SPRING	SPRING 2014: SOME STUFF DONE BUT NOT MUCH. AFTER COURT SIGNED AN ORDER IT PICKED UP SUBSTANTIALLY. THEY WERE MOVED BY APRIL

		30 TH .
1:43	BF	CALL MR. FINNEY
	CLERK	REX FINNEY SWORN
	BF	DIRECT
	RF	EXHIBIT 30: I SENT THE FAX TO YOUR OFFICE.
	BF	MOVE TO ADMIT THE LOAN.
	TM	OBJECT- HEARSAY.
	J	ADMIT EXHIBIT 30
	RF	EXHIBIT 25- EMAIL
1:47	TM	CROSS
	RF	EXHIBIT 30- TALKS OF MODIFICATION.
1:48	BF	OBJECT
	TM	DIDN'T FINISH THE QUESTION.
	BF	OBJECT
	J	SUSTAIN
1:50	BF TM	THAT'S ALL
	J	MR. VISSER PLEASE RETAKE THE STAND.
	DV	THE GARAGE FOR THE HOUSE – CALVIN'S STUFF WAS LEFT INSIDE.
		EXHIBITS 15, 16 AND 26
		EXHIBIT 16 – LOWER LEFT CORNER OF THE FIRST PAGE – PARKING AREA USE TO SLOPE TOWARDS THE HIGHWAY AND DRAIN TO THE DITCH. SAND AND GRAVEL WAS BROUGHT IN. CALVIN SPREAD IT WITH THE FRONT LOADER, THE WATER DOES NOT DRAIN. COST TO FIX IS \$8000.00
1:54	TM	OBJECTION
	J	LET IT STAND THAT HE THINKS IT WILL COST \$8000.00
	TM	OBJECTION
	J	SURE.
	DV	DID NOT SEE DAMAGE OCCUR. DID NOT SEE FORK HIT THE WALL.
	J	STRIKE TESTIMONY.
	DV	TOP LEFT OF EXHIBIT 26 AND PHOTO IN EXHIBIT 16 SHOWS THE DAMAGE TO THE BUILDING.
		OTHER DAMAGE FROM VEHICLE STORED NEXT TO BUILDING.
	TM	OBJECTION.
	J	LAY SOME FOUNDATION.
	DV	HAD A CONTRACTOR COME OUT AND ASSESS THE DAMAGE AND WHAT IT WOULD BE COST TO FIX, IT WOULD BE \$2000.00.
		THE BUILDING WAS CLEANED UP BEFORE THE LAST RENTER. I REPLACED THE CARPET IN THE SMALL OFFICE. THE OFFICE HAS THE DESK IN IT.
2:02		MY UNDERSTANDING FROM MEDIATION IS THAT THEY WERE RESPONSIBLE FOR CLEANING OF THE PROPERTY AND RESTORE IT TO THE DAY THEY MOVED IN.
		EXHIBIT 17 PAGE 5 – I WAS CONCERNED THAT THEY WOULD DAMAGE THE PROPERTY WHEN THEY CLEANED UP.
2:05	TM	OBJECTION – LEADING
	J	I WILL LET MS VISSER TESTIFY.
	TM	OBJECTION – LEADING.
	DV	THEY REPAIRED THE RUT DAMAGE – THEY HIRED SOMEONE TO SMOOTH IT OUT.
		VICKI WOULD COME AND GET MAIL AND COMMENT ABOUT THE ROAD. SHE ASKED ME FOR THE DEED AND I ASKED HER WHEN THE ROAD WAS TO BE BUILT. IT WAS A SAFETY ISSUE. 30 FT FOR CARS TO GO BY THE BUILDING, AT THAT POINT THERE IS A DOOR LEADING OUT. I PUT A BARRIER UP – THAT LASTED FOR AN HOUR. I PUT IT UP AGAIN AND IT WAS TAKEN DOWN. I BUILT A DITCH ON THE ROAD. THEN I CAME TO COURT. AFTER MAY 1ST STOPPED BARRICADING THE ROAD.

2:11	TM	OBJECT – MOVE TO STRIKE.
	J	NOT PRACTICALLY RELEVANT.
	DV	A GUY FROM OREGON WANTED TO BUY THE PROPERTY.
		4-30-14 TO 12-31-14 – VICKI DID NOT COME TO ME ASKING IF SHE WANTED TO PAY OFF THE MORTGAGE OR THAT SHE WAS GETTING A LOAN, MR. LAPHAM DID NOT TELL ME HE WANTED TO GIVE VICKI A LOAN.
		MR. LAPHAM CALLED ME AND WANTED ME TO EXTEND THE MOVE OUT DATE FOR VICKI.
2:14		WHEN I REFINANCED THE LOAN I FOUND OUT VICKI WAS BEHIND.
		IN 2014 I WAS ON SOCIAL SECURITY, THAT IS MY ONLY INCOME.
2:16		I WAS TRYING TO FIND A BUYER FOR THE PROPERTY.
	TM	OBJECTION
	J	CAN'T TELL WHAT PEOPLE TOLD YOU.
	DV	TOLD THE POTENTIAL BUYERS THAT A PHASE 1 WAS DONE.
	TM	OBJECTION
	J	HE CAN ANSWER
	DV	EXHIBIT 24-
	BF	MOVE TO ADMIT EXHIBIT 24
	TM	HEARSAY
	J	IT IS HEARSAY.
	BF	IT SETS FORTH THE REASONS THE BANK DIDN'T GIVE LOAN.
	J	REJECT EXHIBIT 24
	DV	WOULD GIVE HER \$200,000.00 AND THE ROAD WOULD NOT HAVE TO BE PUT IN. NO EXPENSE TO HER. I TOLD VICKI ABOUT THE BUYER AND SHE SAID SHE WOULD HAVE TO THINK ABOUT IT. I TOLD HER SHE DIDN'T HAVE MUCH TIME. I WENT BACK AFTER A COUPLE OF HOURS AND SHE SAID SHE DIDN'T WANT TO. AFTER THAT I TOLD HER I WOULD NOT HELP HER. I BLOCKADED THE ROAD AFTER THAT.
2:23		I BECAME CONCERNED.
		I WANTED TO SELL. I THEN REFINANCED.
2:25		I WENT AND TALKED TO THE LENDER (MR. IKE) – THAT IS WHEN I FOUND OUT THE AMOUNT VICKI OWED. AROUND \$17,000.00 WAS GIVEN TO ME. THAT WAS TO REMAIN IN ESCROW FOR PAYMENTS, THAT DID NOT GET DONE. IT WAS GIVEN TO ME, I AM MAKING PAYMENTS.
2:27	TM	OBJECTION
	BF	COMMENT
	TM	COMMENT
	J	SUSTAIN
	DV	60 BY 90 FEET THE BIG BUILDING.
		32 BY 64 FEET THE MIDDLE BUILDING.
		40 BY 48 FEET THE SILVER BUILDING.
	TM	OBJECTION
	D	SUSTAIN
	DV	I WAS OFFERED 1700.00 A MONTH.
	TM	OBJECTION
	J	WILL SAY WHAT HE WAS OFFERED.
	TM	OBJECT ON FOUNDATION
	DV	OFFERED BEFORE AUTO ALLEY STARTING OCCUPYING THE BUILDING. THAT WAS FOR THE WAREHOUSE AND ¼ ACRE.
		DON'T KNOW WHAT THE MIDDLE BUILDING RENTS FOR.
		THE SILVER BUILDING WAS RENTED FOR \$500.00
2:31	TM	OBJECTION
	BF	SUSTAINED.
	DV	WOULD RENT THE MIDDLE BUILDING FOR \$800.00, THE SMALL BUILDING FOR \$500.00, THE REST OF LOT ONE MINUS THE HOUSE AND GARAGE IS 6 ACRES

		AND WOULD RENT AT \$500.00 PER MONTH.
	TM	OBJECTION
	J	GOES FOR WEIGHT.
2:33	DV	TO START A WRECKING YARD IN BONNER COUNTY IS NOT ALLOWED.
	TM	RENEW OBJECTION.
	J	SO NOTED.
	DV	CAN GET \$6000.00 PER MONTH RENT FOR THE PROPERTY.
2:35		OFF RECORD- TAKE A BREAK
2:56		RESUME
	TM	CROSS
	DV	EXHIBIT 4 – I TOLD HER TO COMPLETE THE ROAD.
	BF	OBJECT
	J	WILL LET HIM ANSWER.
	DV	I WOULD BRING THE ROAD.
	BF	OBJECT – EXHIBIT DOES NOT SAY THAT.
	J	THE DOCUMENT SPEAKS FOR ITSELF.
	TM	I WILL MOVE ON.
	DV	EXHIBIT 17 – NOT IN THE JUDGMENT ABOUT THE ROAD.
	TM	A – 1 - CITES.
3:00	DV	I OBTAINED THE FINAL PLAT APPROVAL IN JUNE AND RECORDED IN JULY.
	BF	OBJECTION.
	J	YOU CAN RE-ASK THE QUESTION.
	DV	I WAS NOT HAPPY ABOUT THE PLAT.
	TM	EXHIBIT E- CITES
	DV	I WAS FOLLOWING THE ORDERS OF MEDIATION.
	TM	EXHIBIT 17 – PARAGRAPH A – CITES
	DV	PAGE 4 – PARAGRAPH 5 – I WAS STILL USING THE MEDIATED SETTLEMENT AGREEMENT AS A GUIDE NOT THE JUDGMENT.
		MEDIATED SETTLEMENT AGREEMENT PAGE 2 SUBSECTION C -
3:08	BF	OBJECT
	TM	LET ME REPHRASE.
	BF	OBJECT
	J	OVERRULE
	DV	LOT 1 IS STILL DEEMED NON SALEABLE.
	TM	OBJECT NOT RESPONSIVE
	J	THAT IS THE ISSUE.
	DV	WANT A PHASE 1 DONE- WANT A CLEAN BILL OF HEALTH. DID THAT IN THE 90'S.
		NUMBER 8 – CITES (DATE OF AGREEMENT IS AUGUST 15 TH) – EXHIBIT E
		WANT HER TO CLEAN UP THE PROPERTY – I WANT A CLEAN PHASE 1.
		PHASE 2 IS RECOMMENDED IN PHASE 1.
3:13		WANT THE PROPERTY CLEAN – EVEN IF I HAVE TO FILE ANOTHER LAWSUIT.
3:15		DAMAGE FROM A FRONT END LOADER. NEVER REPAIRED A STEEL BUILDING. NEVER REPAIRED A PARKING LOT. NEVER TRAINED TO DO EITHER. I HAVE RENTED A BUILDING BUT THAT IS NOT MY BUSINESS.
		CAN GET RENT IN THE AMOUNT OF \$6000.00 FOR THE PROPERTY AS A WRECKING YARD, IT IS THE ONLY ONE IN BONNER COUNTY. NOT MY INTENT TO RUN A WRECKING YARD IT IS FOR SALE.
3:18		DAMAGE TO THE BUILDINGS – GOT A QUOTE – DON'T KNOW WHO – CAN'T REMEMBER HOW MUCH.
	BF	OBJECT
	J	MY NOTES SAY \$2000.00
	DV	I TOOK THE CARPET OUT IT STUNK – DID NOT PUT A CARPET IN – DON'T KNOW WHEN THE CARPET WAS PUT IN.
		THE JUNK IS REMOVED BUT THE STAINS ARE STILL ON THE FLOOR.

	BF	OBJECT.
	TM	GO BACK TO EXHIBIT 17
	J	THIS IS AN ARGUMENT ON INTERPRETATION BETWEEN YOU AND MR. FEATHERSTON. READ INTO THE RECORD.
3:22	DV	THE LENDERS WANTED THE WHOLE PROPERTY PAID OFF.
	BF	OBJECT
	J	SO NOTED.
	DV	\$30,000.00 TO \$40,000.00 WAS OWED BY VICKI, SHE PAID HERS DOWN, THE REST WAS MINE.
3:25		I AM NOT HELPING HER ANYMORE, SHE HAS BEEN LIVING ON THE PROPERTY FOR 8 TO 10 YEARS. THIS HAS TO END.
		I JUST TOOK EXTENSIONS ON THE LOAN.
3:29	BF	OBJECTION
	J	OVERRIDE
	DV	I DON'T KNOW WHAT VICKI PAID ON THE LOAN.
3:31	BF	WE ARE HERE TO ENFORCE THE JUDGMENT.
	DV	I BELIEVE YOUR CLIENTS HAVE RECEIVED COMPENSATION AND IT IS TIME FOR THEM TO GO. I WANT THE REMAINING INVENTORY LEFT NOT THEIR PERSONAL PROPERTY.
	BF	OBJECTION.
	J	SUSTAIN
	DV	THEY WERE IN MY HOUSE TAKING PROPERTY OUT OF CALVIN'S ROOM.
		THE BUSINESS IS A FAILED BUSINESS.
3:34	BF	RE-DIRECT
	DV	EXHIBIT 17 - I STARTED PLATTING AFTER MEDIATION. I STARTED A PRELIMINARY PLAT BEFORE MEDIATION.
3:37	BF	EXHIBIT 31 - THE FULL MEDIATED SETTLEMENT AGREEMENT WITH THE ATTACHMENT.
	J	ADMIT EXHIBIT 31
3:40	DV	CITES THE CONDITION OF THE PROPERTY
	TM	OBJECTION
	J	SUSTAIN
	BF	WHAT SUSTAIN?
		ASK ANOTHER QUESTION?
	J	YES
	DV	JUDGMENT - CITES PART ABOUT REMEDIATION AND DAMAGES.
3:42	BF TM	NO FURTHER QUESTIONS
	TM	RECALL MS. VISSER
3:43	VV	I DID NOT RECEIVE ANYTHING IN THE DIVORCE DECREE.
	BF	OBJECT.
	VV	WE HAD AN AGREEMENT. HE WOULD GET 6.5 IN THE FRONT AND I WOULD GET 6.2. HE WAS DOING TOWING.
3:46		DID NOT AGREE TO TAKE CARE OF TAXES. HE DIDN'T WANT CARS ON THE FRONTAGE, HE TALKED ABOUT TAXES. FROM APPROXIMATELY 2006 IS WHEN CARS WERE ON FRONTAGE PROPERTY. DOUG CAME AND TALKED TO ME ABOUT TAXES. HE WANTED ME TO PAY THE TAXES, I DIDN'T HAVE THE MONEY.
3:49		WE DIDN'T WANT TO SELL BECAUSE WE RAN OUR BUSINESS.
	BF	RE-CROSS
	VV	EXHIBIT 18 - I KNOW DOCUMENT.
		PAGE 2 - PARAGRAPH 10
	TM	OBJECTION
	J	2 STEEL BUILDINGS WERE DAMAGED.
	VV	THE DAMAGE OF THE WAREHOUSE WAS DONE BY PRIOR TENANTS.
	BF	MOVE TO ADMIT EXHIBIT 18

	TM	NO OBJECTION
	J	ADMIT EXHIBIT 18
	VV	PAGE 2 EXHIBIT 16 – TOP LEFT. THE SILVER BUILDING IS THE ONE IN BACK AND THE WAREHOUSE IS THE ONE IN FRONT.
3:59	TM	OBJECT
	J	HER POSITION
	TM	OBJECT
	J	SUSTAIN
	BF TM	NOTHING FURTHER
4:00	CLERK	CALVIN J. VISSER SWORN
	TM	DIRECT
	CV	OPERATING A WRECKING YARD SINCE 5-1-05 WITH MOTHER. MR. VISSER IS MY FATHER.
		THE PARKING LOT WAS A LOT SMALLER, I MADE IT BIGGER. THEY REROUTED THE HIGHWAY AND SO WE MOVED THE ENTRIES TO THE PARKING LOT. I SMOOTHED OUT RUTS. PARKING LOT IS BETTER THAN IN AUGUST 2013. THE HIGHWAY IS HIGHER UP. YES AND NO DAMAGE WAS DONE TO PARKING LOT.
4:05		CITES WHAT WAS PAID FOR MR. VISSER – FOOD, ELECTRICITY, ETC.
		SPRING OR SUMMER OF 2008 WE HAVE BEEN PAYING HIS BILLS.
4:06	BF	OBJECT
	J	OVERRULE
	BF	CROSS
	CV	EXHIBIT 16 - WOODS BROUGHT IN SANDY ROCK – THE SAND MAY HAVE COME UP THROUGH THE ROCK.
		GAVE MONEY TO FATHER EVERY OTHER DAY FOR PERSONAL EXPENSES. IT GOT TOUGH WHEN FATHER STOPPED WORKING.
		HE TOOK A COUPLE VEHICLES AND CRUSHED THEM, THEY WERE ONES I BOUGHT.
	BF TM	NOTHING ELSE.
	BF	RECALL MR. VISSER.
	DV	I CRUSHED ONE VEHICLE. I WOULD GET \$20.00 THREE TIMES A WEEK FROM THEM. THEY MADE A FEW PAYMENTS ON MY MOTORCYCLE AND FOUR WHEELER.
	TM	OBJECT
	J	SUSTAIN
	DV	NOT ALL ELECTRICITY PAID BY THEM.
4:14	J	ORAL ARGUMENTS?
	TM	BETTER BY BRIEFING.
	BF	AGREE
4:15		OFF RECORD
4:18		RESUME
	J	SIMULTANEOUS BRIEFING DUE ON JUNE 12
		REPLY BRIEF'S DUE 6-23-15
		THEN WILL TAKE UNDER ADVISEMENT
4:18		END

OFF RECORD ADMITTED BY STIPULATION:
DEFENDANT'S G
PLAINTIFF'S 17

ORIGINAL

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2015 JUN 12 PM 3 04

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JA

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man)
as to his sole and separate property,)

Plaintiff,)

vs.)

AUTO ALLEY, LLC, an Idaho)
limited liability company, CALVIN)
VISSER and VICKI VISSER, as)
individuals and in their capacity as)
Members and/or Managers of)
Auto Alley, LLC,)

Defendants.)

CASE NO. CV-2013-1045

**PLAINTIFF'S POST TRIAL
BRIEF**

COMES NOW the undersigned counsel for the Plaintiff, Douglas Visser, a married man as to his sole and separate property, and submits the following Post Hearing Briefing in support of the evidence submitted May 28 through 29, 2015.

I. STATEMENT OF FACTS/PROCEDURAL HISTORY

This case was filed by Douglas Visser ("Douglas") on June 25, 2013. The verified Complaint, as well as the testimony on May 28th and 29th, establishes that Douglas Visser and Vicki Visser ("Vicki") were divorced in February, 2005, by Decree that awarded the real property to Douglas subject to the debt. Further, the property had previously been the site of an

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oil and fuel contamination due to prior wrecking yard operations of a renter and prior to that the Vissers. In 2005-6, their son, Calvin Visser, ("Calvin") began operating a wrecking yard on the back portion of the property now identified as Lot 2. Vicki joined Calvin in 2006.

The agreement provided that Calvin and Vicki (operating as Auto Alley) would make the interest payments on the debt owed to Joseph Lapham ("Lapham"), pay property taxes, and utilities and insurance on the property. The Lapham debt was \$111,500.00. (Exhibit 27)

In early 2013, Douglas became aware that the county was threatening a tax deed process due to three (3) years delinquent taxes. After confronting Vicki and Calvin refused to pay the taxes, Douglas' new wife, Margaret Visser, paid the taxes, just days before the deadline. This lawsuit followed.

Out of concern the Defendants would cause damage while vacating the property in response to the lawsuit, Douglas filed an Application for Prejudgment Attachment and Order to Show Cause/Temporary Restraining Order, asking the Court to order any crushing activities be conducted in such a manner as to avoid damage and that any funds or proceeds should be held for payment of Defendants' obligations. These pleadings identified back taxes of \$52,807.00 from 2009 through 2012 and approximately \$150,000.00 in additional mortgage debt incurred as a result of Defendants' non-payment. (See Affidavit of Douglas Visser in Support of Temporary Restraining Order/Preliminary Injunction filed June 25, 2013.)

The Application and TRO makes specific note of Plaintiff's (See Order to Show Cause/Temporary Restraining Order and Motion for Preliminary Injunction/Temporary Restraining Order entered July 3, 2013, and filed June 25, 2013, respectively.)

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Defendants appeared through counsel on July 16 and the TRO/Preliminary Injunction was entered at hearing on July 25. The parties submitted to mediation on August 15, 2013, based upon the Mediated Settlement judgment entered on February 19, 2014.

From the outset, a portion of the Mediated Settlement Agreement was not capable of performance because Lapham, communicating through counsel, Rex Finney on August 29, 2013, refused to "split" the debt between Lots 1 and 2. Exhibit 30.

Faced with a Notice of Default and imminent foreclosure, Douglas agreed the Final Judgment should reflect Lapham's proposal to only release lot 2 upon payment of one-half (1/2) of the obligation, increase the obligation by 6% and pay a \$5,000.00 "fee", which Douglas paid in October, 2013. Lapham agreed to collect proceeds of foreclosure first against Lot 1, the Lot to be retained by Douglas, and subsequently against Lot 2 in the event of a deficiency or failure of Lot 1 to fully satisfy the Lapham obligation. Exhibit B. Per Lapham's terms, the default would "remain in place" until performance on the agreement. Ex. 30

The February 19, 2014 Judgment's requirements are explicit that the Defendants are to "fully perform all of their obligations" before receiving any interest in Lot 2:

- "Plaintiff Douglas Visser will convey to the Defendant, Vicki Visser, that portion of the real property designated as Lot 2 consisting of 6.2 acres ONLY upon condition that Defendants, and each of them, fully and completely perform all of the obligations as set forth hereafter." Exhibit 17, p.2, Section A
- "Douglas shall proceed at his expense (with the exception of a payment referred to in the preceding sentence) to secure final plat approval for Lots 1 and 2, as depicted on Exhibit "B" attached hereto provided that Douglas' obligation under this subsection is *specifically conditioned upon the Defendants' performance of all other terms and conditions of this Judgment.*" Exhibit 17, p.2-3, Section A1
- "Should Defendants fail to timely make any payment in full, when due, as stated herein, the Plaintiff is entitled to an immediate Writ of Possession of the premises ordering the Defendants to vacate said premises." Exhibit 17, p.3, Section A3

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- “On or before June 30, 2014, Defendants shall pay all remaining balance of the Defendant Vicki’s share of the Lapham debt inclusive of all interest and fees thereon, also as described herein below.” Exhibit 17, p.3-4, Section A4
- “If Defendants fail and/or refuse to make payments as set forth in the preceding section [requiring that “all proceeds from such crushing, removal, sale or disposition shall be paid directly to the trust account of Brent C. Featherston and applied to the obligations set forth herein Defendants shall promptly provide an accounting of all such activities described within this paragraph and account for any proceeds”], Defendants must immediately vacate the premises described in Exhibit “A” immediately and Plaintiff shall have an immediate Writ of Possession from this Court as set forth above.” Exhibit 17, p.5, Section B [Section A6]
- “Should Defendants fail to perform any obligation set forth above, the Plaintiff shall be entitled to a Writ of Possession and a Judgment of Quiet Title in and to all of the real property described in Exhibit “A” hereto.... The Court shall thereafter enter a Judgment of Quiet Title in favor of Plaintiff, Douglas Visser, quieting any and all claims of the Defendants to the real property Said Judgment of Quiet Title and Writ of Possession shall include direction to the Bonner County Sheriff or other authority to restore possession of the premises by thereafter removing and disposing of any and all personal property or inventory of the Defendants’ upon the premises.” Plaintiff’s Exhibit 17, p.6-7, Section F

All total, the Judgment contains six (6) references to the consequences if Defendants fail to perform. Any obligation of Douglas is conditioned on Defendants “fully and completely all of the obligations” in the judgment.

Additionally, the Defendants’ failures to perform are as follows¹:

1. Defendants were to pay all current and delinquent real estate taxes on or before January 27, 2014. Ms. Visser testified she paid all taxes and provided a receipt to Featherston Law Firm. When subsequently discovered at final plat \$1,000.00 was owed, Vickie perjured herself and testified the \$1,000.00 was unpaid because Featherston Law Firm applied the December payment of \$1,000.00 to escrow instead of taxes. Vicki Visser’s sworn testimony

¹ These are listed in consecutive order as found in the Judgment, not necessarily in order of

was impeached as false. Exhibits 27, 28, and 29.

2. Defendants were required before June 30, 2014, to "pay all remaining balance the Defendant Vicki's share of the Lapham debt inclusive of all interest and fees thereon."

Not only is it undisputed she did not do so by June 30, 2014, but six (6) months later on December 31, 2014, when Mr. Visser, under threat of foreclosure, refinanced and paid off Lapham, Vickie still had not paid her share of the Lapham debt.

As of December 31, 2014, with accumulated interest and fees and not accounting to Douglas the monthly payments in 2013-14, Vicki's portion of the Lapham debt remained \$34,470.96. Exhibit 21. Also not accounted for in Exhibit 21 is Douglas' application of the \$5,000.00 rent payment to escrow in May, 2014, received from Vicki as rent ordered by the Court for holding over occupancy in April and failing to vacate by March 31. Nor is Douglas' October, 2013 payment of \$5,000 to secure Lapham's agreement to modify the loan credited in Exhibit 21. This was provided for in the Judgment (Exhibit 17, p.4, Section 5) and the modification of the Note and Deed of Trust. (Exhibit C, p.3, Section 2) Applying these two (2) payments totaling \$10,000 raises Vickie's obligation as of December 31 to \$44,47.96.

Exhibit 21 does not give any credit to Douglas for the monthly payments through Featherston Law Firm and applied from October 1, 2013, through March 31, 2014, which calculation is addressed in Exhibit 22.

In Exhibit 22, the escrow accounts for Vickie's share by applying those monthly payments from Featherston Law Firm only in 2014 to Douglas' share, but does not account for the Douglas' \$5,000.00 principal payment in October, 2013. It also does not account for the October, November and December, 2013, payments of \$2,500.00 each month through

substantive significance.

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Featherston Law Firm upon the account, which brings Vicki Visser's obligation up from \$41,793.61 to \$54,293.61. Jackie Fuqua ("Jackie") also testified that upon reviewing page 2 of Exhibit 22 that she had failed to segregate out the \$3,500.00 payment that was included with the \$50,000.00 lump sum payment due under the Judgment and credited on February 28, 2014, to the account. That \$3,500.00 payment, if credited to Douglas, would bring the balance to a total of \$57,793.61 owed by Vicki Visser as of the end of 2014. Jackie testified that the additional interest accrued on that \$3,500.00 is approximately \$200.00, at nine percent (9%) from February through the end of the year, 2014. Vickie's total was \$57,993.61.

3. It is undisputed from Vicki's testimony that she did not pay "all proceeds from such crushing, removal, sale or disposition Directly to the trust account of Brent C. Featherston [or] provide accounting of all such activity described within this paragraph and account for any proceeds less any reasonable costs or business expenses" Exhibit 17, p. 5, Section A6.

4. It is undisputed that Defendants did not vacate Lot 1 on or before March 31, 2014, or the Court's extended deadline of April 30, and did not "remove all personal property and restoring full possession of the premises to the Plaintiff, Doug Visser." Exhibit 17, p.5, Section B. Personal property was left on the premises both in the warehouse and in Douglas' residence and garage after April 30, 2014. This is incredible since the Court made findings in April, 2014 that Defendants had only substantially complied after Douglass filed his April, 2014 Motion for Judgment of Quiet title and Writ of Possession.

Frankly, Defendants' continue to "occupy" a portion of Lot 1 in that they used an existing road through the middle of Lot 1 until Douglas blocked the access in May, 2014. Douglas then reopened it until November when it was clear Defendants had no intention of

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complying. Since then, Defendants cross the neighbors property and enter the back portion of Lot 1 before entering Lot 2. Exhibit 12.

5. The Defendants failed to restore the premises or repair damage. Exhibit 17, p.5, Section C. On this issue, the Defendants argue that they are not responsible for damage that occurred prior to August 15, 2013. Although it is undisputed from the testimony that the property was clean and in good condition following a proceeding with the Idaho Department of Environmental Quality in 2005 and 2006, it appears that the Defendants believe they are not held liable for any damage that might have been caused during their occupancy from 2005 through August 15, 2013. The Judgment instructs otherwise: "Defendants shall be liable for any damage to the premises and shall take measures in vacating the premises to avoid causing damage to the property or any part thereof including mud ruts, etc." Judgment, p.5-6, Section C.

6. The Defendants assert that they have fulfilled the requirements of a Phase I Study. While it is true a Phase I study was prepared and then modified upon the Court's direction to do so, the Phase I Study did identify areas of contamination that required remediation. Defendant, Vicki Visser, is familiar with the process from previous involvement in the IDEQ proceedings in the late 1990s and again in 2005-7. She is familiar with the fact that that process requires cleanup and certification by Allwest, that the cleanup has occurred or that a Phase II Study be performed. Defendants assert that their obligations are only to provide the Phase I Study, not to perform any cleanup. The Judgment provides otherwise: "Should Defendants fully perform the obligation set forth herein and the Plaintiff thereafter concludes the subdivision of the real property as depicted on Exhibit "B" hereto, it is understood that the Defendants' obligation to restore the premises and to conduct a Phase I environmental study

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..... shall be specifically limited to and shall apply to Lot 1” This paragraph directs that should the Defendants perform and receive Lot 2, their Phase I does not need to be applied to Lot 2, but that they are still obligated to “restore” the premises and to conduct a Phase I on Lot 1. It also refers to the preceding paragraph, which was quoted above and which makes the Defendants “liable for any damage to the premises”. That liability in this case includes the requirement to conduct any cleanup identified by the Phase I Study.

While it appears that the cleanup may have occurred, there is no proof or certification of the completion of a cleanup. That is still the requirement and obligation of the Defendants and the testimony is undisputed that without it, it is a stigma upon the property for financing or resale.

7. It was disputed at trial, but it appears clear, that damage occurred to the premises during the process of moving. Despite the Defendants’ testimony that they are not responsible for the photographed damaged to the building, Vicki’s testimony was not credible in light of the photos showing a before and after in which the truck bed positioned against the building, followed by an “after” photo in which the truck bed is gone, tractor tire ruts in the mud reflect the front end loader approaching the truck bed and building at a perpendicular position and the testimony that the truck bed and other large material was removed with a long forklift attachment on the front end loader. The damage to the building reflects and is consistent with the forklift lifting under the building metal and causing damage that is not visible in the “before” photos. This damage and other damage including stains and contamination inside the building is estimated to be repaired at the cost of \$2,500.00.

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Additionally, damage to the parking lot was inadequately repaired by the Defendants pouring sand over boggy, wet conditions where a hard pack gravel surface had previously been in place. The cost to repair the parking lot is \$8,000.00.

The Defendants have not performed upon the Judgment and are not entitled to Lot 2. Conversely, the Defendants' Motion for Contempt against Douglas Visser is not well founded, as Mr. Visser is under no Court Order or obligation to convey Lot 2 until performance was timely and completely provided by the Defendants, which it was not.

II. ARGUMENT

The Plaintiff has before the Court his request for relief as provided for under the Court's Judgment, the Motion for Judgment of Quiet Title and Writ of Possession

The Defendants have filed a Motion for Contempt and allege that Douglas is in contempt of Court for failing to deed Lot 2 to Vicki. The Defendants also argue res judicata in their pre-hearing briefing. At trial, the Defendants argued that Douglas' Motion for Judgment of Quiet Title would act as an inequitable forfeiture of the Defendants' interest in Lot 2.

These issues will be issued in the following paragraphs.

A. Plaintiff is entitled to Judgment of Quiet Title and Writ of Possession

As indicated in the Statement of Facts above, the Court's Judgment entered in this matter on February 19, 2014, contains no less than six (6) references to the relief Plaintiff is entitled to if Defendants do not specifically comply with all of the terms and conditions of the Judgment arising from the Mediated Settlement Agreement.

The Idaho Supreme Court has previously held that a settlement agreement is a "new contract settling an old dispute" and it is, therefore, enforceable by the court. Mihalka v. Sheppard, 145 Idaho 547, 551, 181 P.3d 473, 477 (2008). The Court in Sheppard observed

that a trial court can be called upon to enforce a settlement reached in mediation even before the original suit is dismissed.

In this case, the Mediated Settlement Agreement was merged into a final Judgment. The Judgment set forth the terms and conditions and clearly establishes the Defendants' obligations and a timeline for performance of those obligations. There is no question that the Defendants failed to meet the obligations or the timelines attached to each obligation. The Judgment addresses a consequence in the event the Defendants fail.

In a strikingly similar fact pattern, the Idaho Court of Appeals affirmed the trial court's Judgment of Quiet Title and Writ of Possession in Merrill v. Gibson, 142 Idaho 692, 132 P.3d 449 (App.2005) [rehearing denied April 6, 2006; review denied June 21, 2006]. In this case, Merrill filed an action for quiet title to real property that was occupied by the Defendant Gibson and used in a commercial operation over a number of years previous. The trial court entered judgment giving plaintiff quiet title and possession and establishing a deadline for defendant to vacate the premises. That judgment was appealed and affirmed in an earlier proceeding.

On remand, the trial court again ordered the defendant to remove personal property from the land. At defendant's request, the court granted the defendant an additional thirty (30) days to remove his belongings, with which the defendant failed to comply. Consistent with the court's prior orders and warning, the defendant was prohibited from re-entering the property and the plaintiff was ordered to relocate defendant's personal property and to reimburse the plaintiff his costs from a bond previously posted on appeal. The trial court further testified that either party could schedule additional hearings regarding enforcement and other matters. The defendant appealed this order and the appellate court affirmed.

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“A trial court possesses the authority to compel obedience to its orders and to direct the execution of a judgment ‘on such conditions for the security of the adverse party, as are proper’”. Merrill v. Gibson, 142 Idaho at 695; quoting I.R.C.P. 62(a).

Much like the case of Merrill v. Gibson, this Court and, frankly, Douglas, have provided Defendants numerous opportunities to comply. The record reflects that Defendants did not even begin to substantially comply with the March 31st move deadline until Douglas filed a Motion. This Court provided the Defendants an additional thirty (30) days to comply and the record is undisputed that they failed to fully move out even by the extended deadline.²

In addition to the Court’s extension of time to the Defendants in April, 2014, the record is clear that Douglas has been more than patient with the Defendants. Despite the Judgment requiring full payment of Vickie’s share of the Lapham debt by June 30th, Douglas continued to seek Defendants’ compliance with this provision as late as sixty (60) days later, as reflected in Plaintiff’s Exhibit 4, the August 27th correspondence to counsel.

The Defendants provided no response to counsel’s August 27th correspondence.

By comparison, counsel for Mr. Lapham responded immediately indicating that Mr. Lapham would not extend the October 12th due date on the obligation.

Of less substance that the obligation to pay the debt, but nonetheless an obligation that was a condition of receiving Lot 2, Defendants also failed to:

1. Pay all taxes by January 27, 2014, leaving \$1,000.00 unpaid. Vicki lied under oath to this Court stating that the \$1,000.00 shortfall was due to Featherston applying it to

² Surprisingly, the Defendants assert that the expenses they incurred in moving out in compliance with the Mediated Settlement Agreement and Judgment they stipulated to, are costs that would work a hardship or forfeiture to them if the Court were to enforce the

escrow not taxes. Exhibits 27, 28 and 29 provide proof of Vicki's impeached testimony. Defendants failed to comply with the Court's Judgment.

2. The Defendants failed to vacate the premises. The undisputed testimony establishes a bed liner spray outfit and numerous other personal items were left within Lot 1 after the April 30th extended deadline. They continue to use portions of Lot 1 outside the designated easement.

3. The Defendants failed to repair or compensate Douglas for damage caused to the buildings during their move out. Although this issue was raised during the April, 2014, proceeding, the Defendants never asserted that the damage was pre-existing and caused by a prior tenant until the recent court proceedings. The visual proof in the form of before and after photographs directly refute and impeach Vicki's testimony, showing that the front end loader operator used forks to lift a pickup bed against the building, lifting the bed and crushing the building metal at the same time. Likewise, the testimony from Douglas as to the damage within the building was unrefuted and, finally, the damage to the parking lot was testified by Douglas as being rutting during the move last April and caused by heavy equipment operation. Defendants chose to cover up with sand rather than rock material. The Defendants' "fix", in fact, now compounds the problem by creating pour drainage and tracking sand onto the highway.

Douglas estimates the cost of repair to the building metal at \$2,000 to \$2,500 and the parking lot at \$8,000 for a total of \$10,500.00. He provided no estimate as to the cost to clean or repair the interior, but testified that he removed the carpet that was stained.

Judgment.

DEFENDANTS' POST TRIAL BRIEF - 12

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4. Environmental damage – The Plaintiff and Defendants testified that environmental damage is something they are familiar with from prior cleanups and proceedings with the Idaho Department of Environmental Quality in the late 1990s and again in 2005, 2006, and 2007. Those proceedings are reflected in the attachments to the Phase I Study, Plaintiff's Exhibit 11. Vicki was integrally involved with the prior proceedings and is aware of the need to not only conduct testing for contamination but then to subsequently clean and re-test in order to obtain clearance for the property for agency purposes as well as investors or buyers. The Defendants' position is that they are only required to obtain the Phase I but are not responsible for damage or cleanup of damage. This position is illogical in light of Vicki's testimony that she "cleaned up" these areas by shoveling up contaminated soil and placing it in the crusher to be removed along with vehicles. If Vicki did not believe she was required to clean up and was only obligated to provide a Phase I Study regardless of the results, why then did she attempt to clean up the contaminated areas identified by the Phase I study?

The Judgment provides "Defendants shall be liable for any damage to the premises and shall take measures in vacating the premises to avoid causing damage to the property". This is an all-encompassing liability to the Defendants. They are liable for the damage they have caused prior to mediation and they are liable for damages that they will cause during the move out. Whether or not the contamination occurred during their occupation or during the move out is irrelevant. It is their obligation. The Judgment also provides the Defendants obligated to "restore the premises and to conduct a Phase I Environmental Study as set forth above". The language of the Judgment and the intent is clear that the Defendants are responsible for the cleanup, but are also responsible to provide Plaintiff with proof that the restoration has occurred.

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DEFENDANTS' POST TRIAL BRIEF - 13

Perhaps most vexing about the Defendants' position, is that this cleanup, if it was conducted appropriately as testified could have been addressed by simply requesting Allwest to return, inspect and certify that the work was complete.

Again, this issue was raised and ignored in Plaintiff's counsel's August 27th letter, along with the driveway repair issue and the damage to the building issue.

The Court should grant the Plaintiff's Motion and enter Judgment of Quiet Title and Writ of Possession. Defendants were provided more than sufficient time to have complied with the terms and conditions upon which they might have obtained a deed to Lot 2. Most significantly, they ignored their obligation to pay the remaining portion of the Lapham debt. This failure on their part was not simply delinquent for a matter of days or weeks, but was delinquent for six (6) months. Meanwhile, Mr. Lapham, through his counsel, made clear that the Notice of Default was still in force. Exhibits 1 and 30. Mr. Finney, in his August 29, 2013, correspondence made clear that Mr. Lapham would not withdraw the Notice of Default, but that it would remain in effect.³

A year later, when performance had still not been accomplished by the Defendants, Douglas, through counsel, requested an extension of time on the Note's due date in October, 2014, of one (1) year. Exhibit 4. Mr. Lapham immediately refused an extension of the October, 2014 payoff deadline. Exhibit 23. Furthermore, a month after the payoff deadline, Mr. Finney contacted counsel for Douglas inquiring about acceptance of service for a foreclosure.

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³ Mr. Finney's letter also makes note of the \$5,000.00 "fee" that was required for modification of the agreement. This fee was paid by Douglas on October 15, 2013, and is reflected in the Judgment, p.4, Section A5.

All of this, then, is set against the backdrop in which the modification allowed Mr. Lapham to foreclose on Lot 1 taking all of Douglas' interest in what is clearly the more valuable portion of the property while Vicki refuses to comply with the terms of the Judgment or pay her share of the Lapham obligation.

In what is an audacious defense, both Vicki and Mr. Lapham appeared in a concerted effort to testify that Mr. Lapham was prepared to loan Vicki the balance of her obligation. This begs the question: Was Mr. Lapham prepared to fund that loan only after he had foreclosed on Douglas and obtained title to Lot 1? If so, that would conveniently place him in the position of then dictating the terms of the Note with Vicki and probably eventually owning through foreclosure Lot 2 since she was clearly unable to obtain financing elsewhere or meet her current obligations.

The Plaintiff is entitled to Judgment of Quiet Title and Writ of Possession as to Lots 1 and 2. The Plaintiff requests that the Court order the manner in which eviction occurs such that vehicles, personal property or inventory of the Defendants are disposed of with proceeds held in the Court Fund until further order as provided in Section F of the Court's Judgment.

B. The Defendants' Motion for Contempt Should Be Dismissed.

Civil contempt is the disobedience of a court order directing an act for the benefit or advantage of the opposing party to the litigation. Therefore, contempt proceedings are civil in character where the primary object is to protect the rights of private litigants by enforcing compliance with an order of the court or to compensate for losses or damages sustained by reason of noncompliance.

Camp v. East Fork Ditch Co., 137 Idaho 850, 862, 55 P.2d 304, 316 (2002); quoting 17 Am.Jur. 2d Contempt § 5 (1990)

Significant to this case is that contempt must stem from a party's "disobedience of a court order directing an act for the benefit or advantage of the opposing party". There is

absolutely no factual basis for the Defendants' contempt Motion. The Judgment is clear that Douglas is to convey Lot 2 "ONLY upon condition that Defendants, and each of them, fully and completely perform all of the obligations as set forth hereafter. Plaintiff's Exhibit 17, Judgment, Section A, p.2 [underline added].

Since it is undisputed that the Defendants did not pay their share of the Lapham debt, did not restore the premises and provide evidence of its restoration through an Amended Phase I, did not compensate Plaintiff for damages to the building, did not (and have not) vacate Lot 1 by March 31 or April 30th (or even to today's date), did not pay all taxes by the due date provided in the Mediated Settlement Agreement of December 31, 2013, or as provided in the Judgment of January 27, 2014, did not provide an accounting of the funds and proceeds received from crushing, removal, sale or disposition of the personal property or pay those sums to the trust account of Brent C. Featherston, and finally ignored repeated requests to comply with the Court's Order, the last request being August 27, 2014, thereby placing Douglas in risk of jeopardy of foreclosure, the Plaintiff's Motion for Contempt is not well founded and must be dismissed. There is no Court Order or obligation that Douglas failed or refused to comply with.

At hearing, the Defendants alluded to Exhibit 4, the August 27th correspondence, as "imposing new conditions". A careful read of the correspondence itself is clear that is not the case. In any event, the Defendants failed to respond in any fashion, even to dispute this correspondence, or Douglas' request that Vicki comply with the Court's Judgment (two months after the June 30th deadline.

The August 27th letter makes clear that "Vicki should pay the remaining balance of her half of the debt to Joe Lapham together with any accrued interest". There is indication of the

conversations between counsel as to what that amount is or was at that time. There is no stipulation that the amount was not to be paid or that it was less than the amount provided in the escrow account. The Judgment makes clear, as does the settlement agreement, that Vicki, through her capable counsel, are obligated to pay whatever that half share of the Lapham debt amounts to. The August 27th letter even extends the Defendants an additional twenty-one (21) days to comply.

At hearing, it was suggested that this this was an unreasonable condition to receiving the deed. Indeed, it is the exact condition that the February, 2014, Judgment provides. Furthermore, paragraph 2 of the August 27th letter makes clear that the deed can be signed and proof thereof provided and held until performance is completed. Again, Plaintiff received no response from the Defendants.

The remaining matters in the letter are other conditions that have not been complied with or had been discussed. For example, Paragraph 3 requests that the Defendants construct the road and stop using occupying Lot 1. The testimony at hearing establishes that they continue to do so a year later using the neighbor's property for access until entering the back of Lot 1 and crossing the road system through Lot 1 until entering Lot 2. Additionally, it should be noted that the request for a licensed contractor be used is not an unreasonable one, nor should it be a surprise since the road construction impacts Douglas' considerable investment in Lot 1.

Items 4, 5 and 8 address the various damage issues and have been discussed at length. Items 6 and 7 are matters that are truly outside of the Judgment. However, the record reflects from Ms. Williams' testimony that her client offered to place a privacy fence. Item 7 simply confirms that discussion and proposal. Item 6 is an issue that would naturally be required in

DEFENDANTS' POST TRIAL BRIEF - 17

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the division of the property and conveyance since Lot 2 would receive service from the water and sewer district. Given the history of the parties, it was not unreasonable to request that the Defendants pay their own water and sewer if they were to acquire title to Lot 2 and not intending to use services paid by Douglas and attached to Lot 1. In fact, the record also reflects that Douglas was required to pay up delinquent water service at the time of his refinance. See Exhibit 5, p.4 ["Utilities July through December to Kootenai/Ponderay Sewer District \$692.08".] Douglas testified that Lot 1 is served by a septic system, not a sewer district hook up.

There is no basis for the Defendants' Motion for Contempt and the Court should dismiss it accordingly and enter Judgment of Quiet Title and Writ of Possession in favor of Plaintiff.

C. Res Judicata

The Defendants argue res judicata as somehow acting as bar to this proceeding. The Defendants appear to direct the Court's attention to the prior Motion for Writ of Possession and Judgment of Quiet Title filed April 3, 2014, and heard by this Court on April 23, 2014. That proceeding led to entry of a Judgment Re: Writ of Possession, Quiet Title on May 5, 2014. However, the findings there are clear that they do not bar future proceedings. The Judgment concludes by the Court stating that "the Court will reserve ruling until further hearing as to issues concerning damages to the premises and all other issues that may arise from the Court's Judgment entered February 19, 2014, and these subsequent proceedings." Judgment Re: Writ of Possession and Quiet Title, 5-5-14.

Additionally, the substance of that Judgment is clear that the Court was attempting to provide Defendants with an additional thirty (30) days to comply with the original Judgment

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deadline to vacate Lot 1 by March 31st. The Court made findings on the record and in the Judgment that the only substantial compliance that occurred by the Defendants was following Douglas Visser's filing on April 3, 2014, on the Motion for Writ of Possession and for Judgment of Quiet Title. In other words, the Court noted that Defendants had previously already violated the Court's Order and were being given an extension of time to comply, but that their compliance up to that date had been essentially forced by the Plaintiff filing a Motion.

It is ironic that one (1) year later the Plaintiff has again filed these Motions seeking enforcement of the Judgment because the Defendants failed and/or refused to timely perform despite being provided an opportunity by the Court.

"Res Judicata is comprised of claim preclusion (true res judicata) and issue preclusion (collateral estoppel). Under principles of claim preclusion, a valid final judgment rendered on the merits by a court of competent jurisdiction is an absolute bar to a subsequent action between the same parties, upon the same claim." Hindmarsh v. Mock, 138 Idaho 92, 94, 57 P.2d 803, 805 (2002).

"Claim preclusion bars a subsequent action between the same parties upon the same claim or upon claims 'relating to the same cause of action which might have been made' and continuing issue preclusion protects litigants from litigating an identical issue with the same party or its privy". Ticor Title Company v. Stanion, 144 Idaho 119, 123, 157 P.3d 613, 617 (2007).

The Court's prior Order addressed only an extension of time of thirty (30) days and required the Defendants to pay attorney's fees and rent for that extension. Although they were granted this extension of time and they did, in fact, pay the fees and rent, they did not comply with the Court's Order entered May 5, nor did they continue on to comply with the Court's

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Judgment entered February 19, 2014. These matters were not litigated in the April proceeding and neither claim preclusion or issue preclusion arise from the April, 2014 order.

D. Forfeiture

“It is the lawful privilege of the parties to a contract for the sale of real property to make time of performance of the essence of their agreement. It is their privilege to agree in advance upon the damages to be recompensed in case of breach. The courts, both at law and in equity, must respect the provisions of a contract lawfully agreed to. Ellis v. Butterfield, 98 Idaho 644, 648, 570 P.2d 1334, 1338 (1977).

A settlement agreement is a contract that is enforceable. Mihalka v. Sheppard, 145 Idaho 547, 181 P.3d 473 (2008).

Defendants direct the Court to their significant investment in moving and complying with the judgment in the past year as a basis to argue forfeiture should bar Douglas relief under the judgment. They do so while ignoring the ten (10) years of use and occupancy enjoyed by them without paying their agreed obligations and while causing the Lapham debt to nearly triple from \$111,500 to \$308,000. Further, they claim as “investment” in the property such things as a survey not required by the judgment, taxes of \$45,000+ that they were required to pay as condition of occupancy and, even, the “rent” ordered by the Court in April, 2014 for their unauthorized holdover on the property

Of course, the Judgment is also enforceable by the Court. In this case, the Court’s Judgment sets for condition imposed upon the Defendants and the relief available to the Plaintiff if they fail to comply. Forfeiture does not apply to these provisions.

Douglas is entitled to a judgment of quiet title and writ of possession as provided in the judgment.

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III. CONCLUSION

The Plaintiff is entitled to relief of quiet title and writ of possession for the entire property. The Defendants' motion for contempt should be dismissed. Douglas is entitled to attorney's fees and costs as judgment against the Defendants and the Court is asked to direct the removal of the Defendants and their possessions from the premises with the proceeds from sale or crushing of the personal property on Lot 2 to be held in the Clerk's account to be applied to satisfy judgment in favor of Douglas, as provided for in the Judgment.

DATED this 12th day of June, 2015.

FEATHERSTON LAW FIRM, CHTD.

By 

BRENT C. FEATHERSTON
Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on the 12th day of June, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person in the following manner:

D. Toby McLaughlin, Esq.
BERG & McLAUGHLIN, CHTD.
414 Church Street, Suite 203
Sandpoint, ID 83864

- ☐ U.S. Mail, Postage Prepaid
- ☐ Overnight Mail
- ☐ Hand delivered
- ☒ Facsimile No. (208) 263-7557
- ☐ Other: _____

By 

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DEFENDANTS' POST TRIAL BRIEF - 21

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Attorneys for Defendants

IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

NO. CV-2013-1045

DOUGLAS VISSER, a married man as to his
sole and separate property,

Plaintiff

vs.

AUTO ALLEY, LLC, an Idaho limited liability
company, CALVIN VISSER and VICKI
VISSER, as individuals in their capacity as
Members and/or Managers of Auto Alley, LLC,

Defendant.

DEFENDANTS' POST-TRIAL BRIEF

I. SUMMARY OF ARGUMENT

A. Conveyance of Title of Lot 2 to Defendant Vicki Visser

Pursuant to the Judgment entered in this matter on February 19, 2015, Plaintiff Douglas Visser was required to convey title to a parcel of real property located in Ponderay, Idaho, referred to as "Lot 2," to Defendant Vicki Visser, upon the completion of the tasks identified in the Judgment. With the exception of the payment of the remaining \$30,000 of Defendant Vicki Visser's half of the mortgage owing to Joe Lapham, the Defendants have satisfied their obligations under the Judgment. Moreover, Ms. Visser was prepared to pay the remainder of the Lapham mortgage through a refinance using Lot 2 as collateral, as allowed in the Judgment. However, Plaintiff Douglas Visser refused to convey Lot 2 or allow it to be used as collateral for

1 the loan unless the Defendants performed additional tasks not required by the terms of the
2 Judgment. Thus, he prevented the Defendants from paying the last portion of the loan.

3 Mr. Visser has now obtained a new loan, using Lot 2 as collateral, thereby preventing
4 him from transferring title to Lot 2 as required by the Judgment. The Plaintiff, therefore, should
5 be held in contempt of this Court.

6 **B. Plaintiff's Claims for Quiet Title and Writ of Possession are Barred by the Doctrine**
7 **of Res Judicata.**

8 Mr. Visser is instead asking this Court to: (1) issue a judgment quieting title to Lot 2 to
9 him; (2) to require the Defendants to vacate that property; and (3) to allow Mr. Visser to seize
10 and sell all of the Defendants' personal property. Over a year ago, Mr. Visser asked the Court
11 for this same relief. The Court denied Mr. Visser's request, and issued a Judgment Re Writ of
12 Possession and Quiet Title on May 5, 2014, in which the Court found, "That as of the hearing
13 date, April 23, 2014, the Court finds that the *Defendants have substantially complied with the*
14 *Judgment entered February 19, 2014*, and the Court declines to enter Quiet Title Judgment and
15 Writ of Possession [in favor of the Plaintiff]." (*emphasis added*). This ruling acts as res judicata
16 as to the issue of whether the Defendants have complied with the Judgment. The Plaintiff,
17 however, refuses to accept the Court's ruling, and is asking for precisely the same relief as the
18 Court refused to grant last May.

19 **C. The Defendants have Complied with the Judgment except with Regard to the**
20 **Payment of the Remainder of the Lapham Mortgage, which the Plaintiff Prevented**
21 **the Defendants from Paying.**

22 Although Mr. Visser asserts a wide variety of allegations and complaints, only two of the
23 alleged breaches of the Judgment could be of a material nature: (1) the failure to fully remediate
24 any environmental concerns; and (2) the failure to pay Vicki Visser's portion of the Lapham
25 mortgage. With regard to the former, Mr. Visser simply misconstrues the terms of the Judgment.

1 The Judgment requires only that the Defendants “commission a Phase I Environmental Study by
2 a qualified expert or company to determine the existence or lack of existence of any
3 environmental hazards or contamination at a cost not to exceed \$5,000.” (Ex. 17, p. 6, ¶ D). It is
4 undisputed that Ms. Visser commissioned such a report and provided a copy to Mr. Visser. There
5 is no language in the Judgment that can be reasonably interpreted to require the Defendants to
6 clean up any environmental issues identified in a Phase I Environmental Report, or to provide to
7 Mr. Visser a report showing that there are no environmental concerns, as Mr. Visser contends.
8

9 With regard to remediation, the Defendants’ duties under the Judgment are limited. In
10 this regard, the Defendants were required only to restore “the property to the Plaintiff in a
11 condition of repair at least equivalent to, or in as good or better condition as existed on or about
12 August 15, 2013, normal wear and tear acceptable and free of all Defendants’ personal property,
13 possessions, and debris related to Defendants’ commercial business and Defendants shall be
14 liable for any clean up and remediation necessary to accomplish restoration of the premises as
15 provided herein.” (Ex. 17, p. 5, ¶ C). With the exception of allegations of minor damage that
16 allegedly occurred during the Defendant’s move from Lot 1 to Lot 2, there is no evidence that
17 this provision was violated. In fact, the Defendants spent more than \$31,000 having the property
18 graded and covered with gravel. More importantly, this provision cannot be reasonably
19 interpreted to require the Defendants to remediate any issues that Mr. Visser claims are present
20 with the property, or to provide to Mr. Visser a report showing the property free of any
21 environmental issues, as he contends is required.
22

23 This leaves only Douglas Visser’s claim that Vicki Visser failed to pay her half of the
24 Lapham mortgage by June 30, 2014, as required by the Judgment (Judgment, p. 3 -4, ¶ A(4)).
25 Evidence admitted at trial, however, demonstrated that the maturity date of the Lapham loan was

1 extended until October 12, 2014, by agreement of all of the parties and the lender, Joe Lapham.
2 Even after the extended maturity date expired, Mr. Lapham was prepared to extend to Ms. Visser
3 a new loan which would have satisfied her half of the Lapham Mortgage, using Lot 2 as
4 collateral. The Judgment explicitly provides this right to the Defendants, upon the finalization of
5 the subdivision, which was completed in July, 2014. (Ex. 17, p. 4, ¶ A(5)). However, that loan
6 could not be made without title to Lot 2 being transferred to Ms. Visser at the closing of the
7 refinancing, which Mr. Visser refused to do until Ms. Visser performed additional tasks for
8 which she was not required under the judgment, including the construction of a new road, and
9 the remediation of all environmental concerns on Lot 1. Consequently, although the deadline to
10 pay her half of the mortgage may have expired, Ms. Visser was prepared to cure this default, but
11 was prevented from doing so by Mr. Visser. Douglas Visser had no right to condition the
12 transfer of title to Lot 2 on the Defendants performing additional tasks not required by the
13 Judgment. The Plaintiff, therefore, should be estopped from asking this Court to require that the
14 Defendants forfeit their rights in Lot 2 on account of the failure to pay Ms. Visser's entire share
15 of the Lapham Mortgage, when it was the Plaintiff that unreasonably prevented her from doing
16 so.
17

18 **D. The Plaintiff is Seeking an Inequitable Forfeiture, which this Court Should Refuse**
19 **to Grant.**

20 Even if the Court were inclined to find that the Defendants had breached the terms of the
21 Judgment, the relief sought by Douglas Visser constitutes an inequitable forfeiture that the Court
22 should refuse to allow. It should first be noted that the Judgment in this matter is supposed to
23 have been merely a rendition of the terms of the Mediated Settlement Agreement, per paragraph
24 L of that Agreement. According to the Mediated Settlement Agreement, the Plaintiff's right to
25 forfeiture was only to be triggered in the event that the Defendants failed to make the \$3,500

1 monthly payments that were due in the months of October, 2013 through March, 2014.

2 Paragraph F of the Mediated Settlement Agreement states:

3 Beginning October 1, 2013, Defendants shall be entitled to remain
4 on the premises to conduct their commercial business upon the
5 condition they pay the sum of \$3,500 per month through the Trust
6 account of Brent. C. Featherston, to be applied as follows: \$2,500
7 to the LAPHAM debt and \$1,000 toward Bonner County taxes.
8 Defendants shall continue to make \$3,500 per month payments
9 from October 1, 2013 through March 31, 2014, due on or before
10 the first day of each month. **Should Defendants fail to timely
11 make any payment in full when due as stated herein, Plaintiff
12 shall have an immediate right to writ of possession of the
13 premises.**

14 (Ex. E) (*emphasis added*). The Defendants made all of these payments.

15 This is the only reference in the Mediated Settlement Agreement to a right by the
16 Plaintiff to obtain a writ of possession, and it is limited to a failure to provide a payment required
17 by paragraph F therein. Yet, when the Mediated Settlement Agreement was converted to a
18 stipulated Judgment by Mr. Featherston, this provision was somehow changed to allow forfeiture
19 in the event that "Defendants fail to perform any obligation" in the entire Judgment. (Ex. 17, p.
20 6-7, ¶ F). This does not accurately reflect the terms of the Mediated Settlement Agreement.
21 While it may be true that the Settlement Agreement merged with the Judgment, the equity of the
22 situation weighs heavily in the Defendants' favor.

23 Because the stipulated Judgment in this matter was rendered upon a Mediated Settlement
24 Agreement, it is to be treated as a contract between the parties. Actions to forfeit contractual
25 rights of the defaulting party, pursuant to a forfeiture clause, are addressed to the court's
equitable discretion. *Graves v. Cupic*, 75 Idaho 451, 272 P.2d 1020 (1954). "Equity abhors
forfeitures." *Stringer v. Swanstrum*, 66 Idaho 752, 759-60, 168 P.2d 826, 829-30 (1946). Under
Idaho law, where the forfeiture or damages fixed by the contract are arbitrary and bear no

1 reasonable relation to the anticipated damages, and are exorbitant and unconscionable, they are
2 regarded as a 'penalty' and the contractual provision therefor is void and unenforceable. *Id.*
3 *Walker v. Nunnenkamp*, 84 Idaho 485, 491, 373 P.2d 559, 562 (1962).

4 Since the date of the Mediated Settlement Agreement, the Defendants have invested more
5 than \$236,000, and countless hours of work, into the subject properties, including, but not
6 limited to, the payment of \$149,000 toward the mortgage owing on the property, \$45,418.77 in
7 real estate taxes, \$2,000 in platting costs, \$31,800 in gravel and grading expenses, \$2,400 in
8 obtaining a Phase I Environmental study, \$5,000 in rent, and \$500 in survey work. In fact, Vicki
9 Visser is the only party to have made a very real effort to pay off any portion of the Lapham
10 Mortgage, with only about \$30,000 remaining on that debt. Moreover, Ms. Visser was prepared
11 to refinance her debt, but could not do so without title to Lot 2 so that the property could be
12 pledged as collateral for the loan, which Douglas Visser unreasonably refused to provide, instead
13 demanding additional conditions to which the Defendants were not obligated to perform. Mr.
14 Visser's anticipated damages caused by the Defendants failure to pay the remaining \$30,000 to
15 Joe Lapham, therefore, are not reasonably related to the damages that will occur to the
16 Defendants if they are forced to forfeit their entire investment.

17
18 In addition to seeking title to Lot 2, Douglas Visser is also requesting that the Court issue
19 "an Order directing and permitting the Plaintiff to seize and remove all personal property
20 remaining on the premises and to dispose of, sell or crush all such items . . . to be applied to the
21 Plaintiff's attorney's fees, costs and damages." (P's Mot. for J. of Quiet Title, pp. 1-2). Because
22 the Defendants reside on the premises, Douglas Visser, therefore, is attempting to take literally
23 everything that his son and former wife own – all because the Defendants had a balance of
24 \$30,000 owing on their share of the mortgage. Such a remedy is not reasonably related to the
25

1 damages allegedly suffered by Mr. Visser. The remedy of forfeiture would act as a penalty,
2 rather than a means of reasonably compensating Mr. Visser for damages that he has suffered as a
3 consequence of a default by the Defendants. Under these circumstances, the Court cannot
4 equitably allow the specific performance of the forfeiture clause in the Judgment.

5 **E. Relief Sought**

6 Ms. Visser requests that this Court require Mr. Visser to convey title to Lot 2 free and
7 clear of any encumbrances, except existing non-monetary encumbrances, such as easements and
8 the like. If Mr. Visser is unable to do so within 21 days, the Court should order that Lot 1 be
9 listed at a reasonable price and sold so as to satisfy the current encumbrance on Lots 1 and Lot 2.
10 Upon the conveyance of title to Lot 2 to Ms. Visser, she should be required to pay to Mr. Visser
11 the balance that she owed on her half of the Lapham mortgage, thereby repaying Mr. Visser for
12 Vicki Visser's portion of the mortgage that he paid to Mr. Lapham on her behalf. In this way,
13 the Defendants receive title to Lot 2 as required by the Judgment, and Mr. Visser received the
14 proceeds from the sale of Lot 1 and reimbursement of Vicki Visser's share of the Lapham debt
15 that he paid to Joe Lapham.
16

17 **II. STATEMENT OF FACTS**

18 1. On August 15, 2013, the parties to this action entered into a Mediated Settlement
19 Agreement, resolving disputes regarding ownership of real property located in Ponderay, Idaho,
20 and related issues (hereinafter the "MSA").
21

22 2. On February 19, 2014, the Court entered a Judgment herein pursuant to the
23 Mediated Settlement Agreement, which required that it be converted to a Judgment.

24 3. Pursuant to the Judgment, Douglas Visser was to split the property into two
25 parcels via the platting process, and to convey to Vicki Visser Lot 2 upon the Defendants'

1 performance of certain obligations, which included vacating Lot 1, commissioning a Phase I
2 Environmental Study, providing a copy of said study to the Plaintiff's Counsel, and paying off
3 Vicki Visser's half of the mortgage the parties owed to lender Joe Lapham.

4 4. The Defendants vacated Lot 1, commissioned the Phase I Environmental Study,
5 and provided a copy of said study to Plaintiff's counsel.

6 5. The subdivision of the property into Lot 1 and Lot 2 was completed in July, 2014.
7 (Ex. 8).

8 6. The Defendants have invested more than \$236,000 into the property since the
9 entry of the Mediated Settlement Agreement, including \$149,000 in payments against Vicki's
10 half of the Lapham Mortgage, including monthly payments of from October, 2013, through
11 March, 2014, a \$50,000 payment in February, 2014, and an \$80,000.00 payment in July, 2014.
12 (Ex. H).

13 7. By agreement of the parties, the balance of Ms. Visser's share of the Lapham
14 mortgage was \$109,864.72 as of June 18th, 2014. (Ex. 4). Interest was accruing on that debt at
15 9% per annum, at a rate of \$27.09 per day.

16 8. The Defendants made the payment of \$80,000 against Vicki Visser's share of the
17 Lapham mortgage on July 14, 2014. (Ex. 4). With interest from June 18 through July 14, 2015,
18 and applying the \$80,000 payment, the balance of the Vicki Visser share of the Lapham
19 mortgage as of July 14, 2014, was \$30,569.06, with interest accruing thereafter at a rate of \$7.54
20 per day.

21 9. Counsel for the parties had a meeting in which Defendants' counsel explained that
22 Joe Lapham was prepared to refinance Vicki Visser's portion of the debt, using Lot 2 as
23
24
25

1 collateral. Mr. Featherston acknowledged in this meeting that Mr. Visser would have to transfer
2 title. (*Testimony of Margaret Williams*).

3 10. Mr. Visser, however, refused to transfer title to Lot 2 to Vicki Visser, or to allow
4 Lot 2 to be used as collateral for a new loan from Joe Lapham, until such time as the Defendants
5 build a new road, fully remediated Lot 1 with regard to any environmental concerns, provide
6 plans for a privacy fence, perform additional work on the parking lot, obtain a new water
7 connection for Lot 2, and pay \$2,500 to Douglas Visser. (Ex. 4).

8 11. Pursuant to the express terms of the Judgment, upon the completion of the
9 subdivision of the properties, which occurred in July, 2014, the Defendants had the right to split
10 the Lapham debt using Lot 2 as the collateral for Vicki's portion of that debt. (Ex. 17, p. 4, ¶
11 A(5)).

12 12. Mr. Visser did not have the right to refuse to allow Ms. Visser to utilize Lot 2 as
13 collateral for the refinancing of her share of the Lapham mortgage, and prevented the Defendants
14 from satisfying that obligation.

15 13. On December 31, 2014, Douglas Visser borrowed \$270,000 through loan star
16 mortgage, using both Lot 1 and Lot 2 as collateral for the loan.

17 14. With these proceeds, Mr. Visser paid \$211,287.26 to Joe Lapham to satisfy the
18 Lapham mortgage in full.

19 15. Of this \$211,287.26, only \$31,850.45¹ was owing by Vicki Visser to Mr. Lapham.
20 Consequently, Mr. Visser's obligation to Mr. Lapham at that time was \$179,436.81.

21
22
23
24 ¹ Mr. Featherston admits on behalf of Mr. Visser that as of June 18th, 2014, the balance on Vicki
25 Visser's portion of the loan was \$109,864.72. The Defendants paid \$80,000.00 on July 14, 2014.
Interest, therefore accrued on the \$109,864.72 at 9% per annum from June 18th to July 14th in the
amount of \$704.34, leaving a balance of \$30,569.06. Interest then accrued on this new balance

1 16. By encumbering Lot 2, the Plaintiff has made it impossible for the Plaintiff to
2 pass title free and clear to the Defendants, as is required under the Judgment, without satisfying
3 this new debt or substituting collateral.

4 III. ARGUMENT

5 A. The Plaintiff's Claims are Barred by the Doctrine of Res Judicata.

6 In this matter, the Plaintiff alleges that he has been aggrieved by the Defendants' failure
7 to abide by the terms of the settlement agreement and resulting stipulated judgment. The Plaintiff
8 brought this same motion on April 3, 2014. After an evidentiary hearing, the Court issued a
9 Judgment Re Writ of Possession and Quit Title on May 5, 2014, finding "**the Defendants have**
10 **substantially complied with the Judgment entered February 19, 2014, and the Court**
11 **declines to enter Quit Title Judgment and Writ of Possession.**" (*Judgment Re Writ of*
12 *Possession and Quit Title*, ¶ 2) (*emphasis added*). The Plaintiff, nevertheless, seeks the same
13 remedies as were denied a year ago, and asserts that the Defendants have failed to substantially
14 comply with the Judgment, despite the Court's prior Judgment on this same issue. These claims
15 are barred by the doctrine of *res judicata*.

17 Under principles of claim preclusion, a valid final judgment rendered on the merits by a
18 court of competent jurisdiction is an absolute bar to a subsequent action between the same parties
19 upon the same claim. *Aldape v. Akins*, 105 Idaho 254, 256, 668 P.2d 130, 132 (Ct.App.1983); *see*
20 *Diamond v. Farmers Group, Inc.*, 119 Idaho 146, 150, 804 P.2d 319, 323 (1990) (citing from
21 *Joyce v. Murphy Land Co.*, 35 Idaho 549, 208 P. 241 (1922)). The three fundamental purposes
22 served by *res judicata* are:
23
24

25 at 9% per annum from July 15th until December 31, in the amount of \$1,281.39, for a balance at
the time of the refinance of \$31,850.45.

1 First, it “[preserves] the acceptability of judicial dispute resolution
2 against the corrosive disrespect that would follow if the same
3 matter were twice litigated to inconsistent results.” Second, it
4 serves the public interest in protecting the courts against the
burdens of repetitious litigation; and third, it advances the private
interest in repose from the harassment of repetitive claims.

5 *Aldape*, 105 Idaho at 257, 668 P.2d at 133 (citation omitted).

6 This court has already issued a Judgment finding that the Defendants have substantially
7 complied with the underlying Judgment. The Plaintiff has no right to relitigate that issue, as it is
8 attempting to do with his Motion. The Motion, therefore, must be denied.

9 **B. The Defendants Have Satisfied All of the Terms of the Judgment Re Writ of**
10 **Possession and Quiet Title.**

11 The conditions set forth in the Court’s second Judgment, that being the Judgment Re Writ
12 of Possession and Quiet Title issued by this Court on May 5, 2014, have been satisfied, as
13 follows:

- 14 • **Rent for Lot 1** - Paragraph 3: The Defendants paid \$5,000 in rent for their delay
15 in vacating Lot 1, even though such a requirement is not found in the original
16 Judgment; rather, it was a term of the Mediated Settlement Agreement which
merged with the Judgment, and should not have been implemented.
- 17 • **Attorney’s Fees** - Paragraph 4: The Defendants paid Douglas Visser’s attorney’s
18 fees.
- 19 • **Vacating Lot 1** - Paragraph 5: The Defendants fully vacated Lot 1, with the
20 exception of some personal property, which Douglas Visser has decided to keep.
- 21 • **Revised Phase I Environmental Study** - Paragraph 6: The Defendants caused to
22 be prepared and delivered to Plaintiff’s counsel an updated, revised and
23 corrected Phase I Environmental Site Assessment through Allwest Testing and
Engineering reflecting, among other things, that the assessment and/or report is
prepared for the benefit of Plaintiff.

24 The evidence of the Defendants’ compliance with the Judgment Re Writ of Possession
25 and Quiet Title is unrefuted. The Judgment Re Writ of Possession and Quiet Title, however, also

1 indicates that the Court was reserving until further hearing issues concerning damages to Lot 1
2 and all other issues that may arise from the Court's Judgment entered on February 19, 2014.
3 Consequently, the Court has jurisdiction to resolve any issues not resolved at the first hearing.
4 However, the issues addressed at the hearing a year ago are barred by the doctrine of *res*
5 *judicata*. This includes the Plaintiff's claims related to the Phase I Environmental Study.

6
7 **C. The Defendants Have Satisfied All of the Terms of the First Judgment, or Were
Prevented from Doing So by the Plaintiff.**

8 The Judgment requires Douglas Visser to convey to Vicki Visser Lot 2 when Ms. Visser
9 performs all of her obligations set forth therein. She has done so, except in the case of the
10 payment of her entire half of the Lapham mortgage, for which she was prepared to pay the
11 remaining balance of approximately \$30,000, but was prevented from doing so by Douglas
12 Visser. There is no dispute that the Defendants satisfied the following provisions of the
13 Judgment:

- 14
15 • **Cost to Subdivide Property** - Paragraph (A)(1) – The Defendant paid \$2,000.00
towards the costs of subdividing the property.
- 16
17 • **Payment of Real Estate Taxes** - Paragraph (A)(2) – The Defendants paid
\$45,418.77 in real estate taxes for the properties, including both Lots 1 and 2,
18 bringing the taxes current through tax year 2013.
- 19
20 • **Monthly Payments** - Paragraph (A)(3) – The Defendants paid \$3,500 per month
from January 31, 2014, through March 31, 2014.
- 21
22 • **Accelerated Mortgage Payments** - Paragraph (A)(5) – The parties treated the
Lapham debt as having been divided, with Doug Visser being responsible for half,
23 and Vicki responsible for half. The subdivision process dividing the property into
Lot 1 and Lot 2 was completed in July, 2014, and the Defendants made
accelerated payments on her share of the underlying debt, in the amount of
\$50,000 paid in February, 2014, and \$80,000, paid in July, 2014.
- 24
25 • **Lifting of Temporary Restraining Order** - Paragraph (A)(6)(A) – The
Temporary Restraining Order was lifted, and the Defendants crushed vehicles to
produce the funds to make the accelerated payments.

- **Vacating Lot 1** - Paragraph (A)(6)(B) – The Defendants fully vacated Lot 1.
- **Claim to Personal Property** – Paragraph (A)(6)(E) – The Defendants released any claim to Plaintiff's personal property.

The only issues to be resolved by the Court with respect to the Judgment are: (1) the scope of the Defendants' obligation to provide the Phase I Environmental Study; (2) the payment of Vicki Visser's share of the Lapham Mortgage; and (3) whether Lot 1 was damaged when the Defendants moved their property to Lot 2.

1. The Defendants Have Satisfied their Obligation to Provide the Environmental Study.

Douglas Visser contends that the Defendants failed to provide to him a Phase I Environmental Study that demonstrates that Lot 1 is free of any environmental issues whatsoever. That, however, is not what the Judgment requires.

Paragraph 6(D) of the Judgment states:

By March 31, 2014, Defendants at their expense shall commission a Phase I Environmental Study by a qualified expert or company ***to determine the existence or lack of existence of any environmental hazards or contamination at a cost not to exceed \$5,000***, to insure compliance with the provisions in the preceding paragraph. The Phase I study shall be complete and delivered to Plaintiff by no later than April 15, 2014. Further Defendant Vicki Visser, shall provide true and accurate copies to the Plaintiff's Counsel any and all environmental studies performed on the property, past or present.

Should Defendants fully perform the obligations set forth herein, and the Plaintiff thereafter concludes a subdivision of the real property as depicted on Exhibit "B" hereto, it is understood that the Defendants' obligations to restore the premises and to conduct a Phase I Environmental Study as set forth above, shall be specifically limited to and shall apply to Lot 1 (consisting of 6.5 acres as set forth on Exhibit "B" hereto).

(Ex. 17, *Emphasis Added*).

1 The Judgment does not require the Defendants to remediate any identified environmental
2 issues that are identified in the report. Rather, it requires only a report which determines the
3 existence of lack of existence of any environmental hazards or contamination. Had it been the
4 agreement of the parties that the Defendants would have to remediate such hazards or
5 contamination, then such language could have easily been included. It was not.

6 With regard to a requirement that the Defendants repair the property, the Defendants'
7 duties under the Judgment are expressly limited. The Judgment states at paragraph 6(C):

8
9 Upon Defendants vacating the real property described above,
10 possession of ***the property shall be restored to the Plaintiff in a***
11 ***condition of repair at least equivalent to, or in as good or better***
12 ***condition as existed on or about August 15, 2013, normal wear***
13 ***and tear acceptable*** and free of all Defendants' personal property,
14 possessions, and debris related to Defendants' commercial
15 business and Defendants shall be liable for any clean up and
16 remediation necessary to accomplish restoration of the premises as
17 provided herein. Defendants shall be liable for any damage to the
18 premises and shall take measures in vacating the premises to avoid
19 causing damage to the property, or any part thereof, including mud
20 ruts, etc.

21 (Judgment, p. 5, ¶ C) (*emphasis added*).

22 No reference is made anywhere in the Judgment to a duty by the Defendants to remediate
23 any environmental issues. Rather, this provision is clearly intended to require the Defendants to
24 repair any damages that might occur to the property during the Defendants transition of its
25 personal property from Lot 1 to Lot 2. This becomes even clearer upon review of the original
language in the Mediated Settlement Agreement. As set forth in Paragraphs H and I therein:

1 H. Upon Defendants' vacating the property, the property shall be restored to a
2 condition of repair at least equivalent, good or better than exists as of the date
3 of this Agreement, normal wear and tear excepted. Of primary concern to
4 Plaintiff is any mud ruts or other damage to the property.

5 I. At such time as the property is vacated, the Defendants at their expense, not to
6 exceed \$5,000, shall commission a Phase I Environmental Study by a qualified
7 expert company to determine the existence or lack of existence of any
8 environmental hazards. Defendant VICKI VISSER shall provide to Plaintiff copies
9 of any and all prior environmental studies performed on the property.

10 (Ex. E).

11 Paragraph H is the only provision in the agreement which imposes upon the Defendants
12 any duty to repair. (*Id.*). No mention is made of any duty to "remediate." Moreover, the phrase,
13 "of primary concern to the Plaintiff is any mud ruts or other damage to the property,"
14 demonstrates clearly that the duty to repair was limited to damages caused during the
15 Defendants' moving of its property from Lot 2 to Lot 1.

16 As with the Judgment, the MSA is devoid of any language which can be reasonably
17 construed to require the Defendants to remediate any environmental hazards identified by the
18 Phase I Study. Rather, the Defendants are only required to provide the study itself, which they
19 undisputedly have done.

20 The Judgment cannot be reasonably construed, as Mr. Visser contends (Ex. 4), to provide
21 a limitless duty upon the Defendants to provide to the Plaintiff a parcel free of any issues
22 whatsoever. Even if the Court were to read into the Agreement a duty to remediate
23 environmental conditions, such a duty is expressly limited to \$5,000. As such, there is no
24 justification whatsoever for Mr. Visser's claim that the Defendants are required to provide a
25 "clean bill of health" for Lot 1.

It should not be forgotten that the stipulated Judgment was drafted by Plaintiff's counsel,
as evidence by the caption in the upper left hand corner of the Judgment itself. "A stipulation is

1 a contract and its enforceability is determined by contract principles,” and the Court must
2 construe a stipulation against the drafter. *Id.*; *Guzman v. Piercy*, 155 Idaho 928, 936, 318 P.3d
3 918, 926 (2014). To the extent that these provisions can be read in two ways, the Court must
4 construe the Judgment in favor of the Defendants.

5
6 At trial, Douglas Visser argued that the Defendants must remediate any environmental
7 issues because they have been the tenants on the property for years. ***However, no evidence was***
8 ***presented proving that any environmental issues even exist, or that such issues were caused by***
9 ***the Defendants.*** The Defendants have not been the only commercial tenants to have occupied
10 the property, and although Mr. Visser claimed to have received an environmental report in the
11 past indicating that the property was free of such issues, no such report was admitted at the
12 hearing, and his testimony is clearly self-serving.

13
14 In any case, Mr. Visser cannot now impose conditions that are not in the Mediated
15 Settlement Agreement and resulting stipulated Judgment. Had Mr. Visser wanted to preserve
16 claims for environmental cleanup, it was incumbent upon him to do so by express terms in the
17 settlement. He did not do so. In fact, he did the opposite – he released all such claims. As set
18 forth in the Mediated Settlement Agreement,

19
20 The parties mutually agree and acknowledge that this settlement
21 constitutes a full, final and complete release of any and all claims
22 or causes of action against one another or any other party named in
23 the Complaint or Counter Complaint, if any, which was made part
24 of the Complaint or Counter-Complaint, or could have been
25 claimed in a Complaint or Counter Complaint against the named
Defendant(s) or Counter-Defendant(s) as it relates to the
underlying cause of action which forms the basis of this dispute.

(Ex. E, p. 4, ¶ O).

It is well established law in Idaho that:

1 The existence of a valid agreement of compromise and settlement
2 is a complete defense to an action based upon the original claim.
3 The agreement supersedes and extinguishes all pre-existing claims
4 the parties intended to settle. In an action brought to enforce an
5 agreement of compromise and settlement, made in good faith, the
6 court will not inquire into the merits or validity of the original
7 claim.

8 *Goodman v. Lothrop*, 143 Idaho 622, 625, 151 P.3d 818, 821 (2007) (citing *Wilson v. Bogert*, 81
9 Idaho 535, 542, 347 P.2d 341, 345 (1959)) (internal quotations omitted). Any issues between the
10 parties as to who was required to remediate any environmental issues that existed as of August
11 15, 2013 – when the Mediated Settlement Agreement was executed – have been resolved.
12 Defendants' only obligations in this regard are set forth in the MSA and the Judgment, and in
13 neither are the Defendants required to remediate any environmental issues that existed as of
14 August 15, 2013. Moreover, there was no evidence presented at the evidentiary hearing as to any
15 such issues arising after August 15, 2013.

16 **2. The Defendants Paid Nearly All of Vicki Visser's Half of the Lapham**
17 **Mortgage, and were Prepared to Pay the Remainder, but were Prevented**
18 **from Doing so by the Plaintiff.**

19 Douglas Visser's primary allegation is that the Defendants failed to pay their half of the
20 Lapham mortgage. The Judgment requires that the Defendants pay Vicki Visser's half of the
21 Lapham Mortgage by June 30, 2014, which, at the time, was the maturity date of the debt owing
22 to Mr. Lapham. (Ex. 17, p. 4, ¶ (A)(4); Ex. 6). It is undisputed that the Defendants made various
23 payments towards Ms. Visser's portion of the Lapham mortgage, and Plaintiff's counsel
24 admitted in his August 27, 2014, letter to Defendants' counsel that they agreed the balance of
25 Ms. Visser's portion of the debt as of June 18th, 2014, was \$109,864.72. The Defendants paid an
additional \$80,000 on July 14th, 2014. Thus, with interest at 9% from June 18th through July 14th

1 of \$704.34, and applying the \$80,000 payment, Vicki Visser owed only \$30,569.06 as of July
2 14th, 2014. Interest at 9% on that balance accrues at a per diem rate of \$7.54 per day.²

3 As noted above, the Judgment required the Defendants to pay Vicki's share of the
4 Lapham debt by June 30, 2014. The parties, however, agreed to an extension of the maturity date
5 of the loan to October 30, 2014. (Ex. B). More importantly, Ms. Visser arranged for the
6 refinancing of her portion of the debt through Joe Lapham, who testified that he was prepared to
7 loan to Vicki Visser monies sufficient to pay off her portion of the mortgage, with the new loan
8 to be secured by Lot 2. Vicki Visser, Margaret Williams, and Rex Finney confirmed Mr.
9 Lapham's willingness to refinance Vicki's portion of the mortgage, and no evidence was
10 presented by the Plaintiff to contradict it. In order for this transaction to occur, however, Mr.
11 Visser would have to be willing to transfer title to Lot 2 to Vicki Visser at the time of, or before
12 the loan was made by Mr. Lapham, so that Lot 2 could be pledged as collateral.

14 Mr. Visser, however, refused to transfer the title or allow Lot 2 to be used as collateral for
15 a new loan, indicating that he would not do so until after the Defendants had built a new road
16

17 ² The Plaintiff claims that the \$2,500 payments made by the Defendants from January 31, 2014 through March 31,
18 2014, should be credited to Doug Visser and treated as rent paid by the Defendants. There is nothing in the
19 Judgment that indicated these payments are to be treated as rent. Rather, the Judgment states specifically, "[A]ny
20 payments made by each party until such division and allocation of the debt [is] to be credited to the party making
said payments." (Ex. 17, p. 4, ¶ A(5) last sentence). The Judgment contains absolutely no language indicating that
these payments are to be credited against Doug Visser's share of the Lapham mortgage. *Continued on next page* -

21 Moreover, Mr. Visser's own communications demonstrate that he treated these payments as credits against Ms.
22 Visser's share of the debt. In the August 27, 2014 letter from Mr. Visser's attorney to defense counsel, Mr.
Featherston stated:

23 Margaret, when we discussed this on June 18th, we agreed that your client's
24 share of the note was then \$109,864.72. I understand that she made an \$80,000
25 payment in July directly into escrow, but the balance needs to be paid together
with the nine percent (9%) interest that has accrued from June 18th until the
\$80,000.00 was posted on July 16th, and nine percent (9%) interest accruing on
the balance until Vicki pays that balance off.

(Ex. 4). The math does not lie. Had the parties agreed that the \$2,500 payments would be treated as credits to Doug
Visser, then the agreed balance set forth in Mr. Featherston's letter would not have been \$109,864.72.

1 into their property, and until the Defendants provided to Mr. Visser an environmental study that
2 showed that Lot 1 was free of any environmental issues. In fact, in the August 27, 2014, letter
3 from Plaintiff's counsel to Defendants' counsel, Mr. Visser acknowledges that plat is complete
4 and that "Lot 2 can be deeded to your client, but only if she performs duties under agreement,"
5 but indicates that he will not transfer title until the following conditions are met:

- 6 1. That the Defendants "construct the road to Lot 2 according to specification and by a
7 licensed, acceptable contractor."
- 8 2. That the Phase I Report "be revised and a new report issued by Allwest or another
9 qualified engineer indicating that those areas highlighted are corrected or no longer a
10 concern" and that the Defendants provide "a clean bill of health" for the property.
- 11 3. That the Defendants acquire their own water meter and service to Lot 2.
- 12 4. That Vicki provide a deadline to construct a privacy fence.

13 (Ex. 4).

14 None of these demands are conditions set forth in the Judgment that must be met prior to
15 the Plaintiff being obligated to convey title to Lot 2 to Vicki Visser. Consequently, Douglas
16 Visser improperly interfered with the Defendants' ability to pay off Vicki Visser's share of the
17 Lapham mortgage. Having prevented the Defendants' from curing the default in the payment of
18 the remainder of the Lapham mortgage, Douglas Visser cannot now rely upon that failure in
19 order to gain for himself a windfall. It would not, therefore, be equitable under such
20 circumstances to allow the Plaintiff to reap the benefit of the Defendants efforts by allowing a
21 forfeiture.
22

23 ***3. The Plaintiff has Waived any Claim for Strict Compliance with the***
24 ***Deadlines set forth in the Judgment.***

25 As noted above, the Judgment required the Defendants to pay half of the Lapham
mortgage, and the Defendants paid all but approximately \$30,000 of Ms. Visser's half. Nearly

1 all of the payments made by the Defendants were late, either because Mr. Featherston's office
2 did not relay the payment from his trust account to Panhandle Escrow in a timely manner, or
3 because the Defendants were late in paying. In fact, the payment ledger provided by Panhandle
4 Escrow which was admitted at trial shows that seven of the eight payments made toward this
5 debt after the date of settlement were late, and seven late payment charges were assessed to the
6 parties. (Ex. C). Nevertheless, Mr. Visser accepted all of these late payments, thereby
7 benefitting by the increasing equity in his property. This includes the \$80,000 paid by the
8 Defendants on July 14, 2014, which was after the June 30, 2014 deadline set forth in the
9 Judgment. Douglas Visser has, therefore, waived his claim for strict compliance to the deadlines
10 set forth in the Judgment.
11

12 Where a contract for sale of real estate makes time of the essence,
13 and provides for a forfeiture of the vendee's rights for failure on
14 his part to make payments at certain times, a continued course of
15 conduct on the part of the vendor in failing to declare a forfeiture,
16 thereby leading the vendee to believe that the vendor waives a
17 strict compliance with the terms of the contract, **works a waiver of
the vendor's right to declare a forfeiture, unless and until he
gives the vendee reasonable notice of his intention to do so, and
a reasonable opportunity to make the delinquent payments.**

18 *Sullivan v. Burcaw*, 35 Idaho 755, 763, 208 P. 841, 843 (1922) (*emphasis added*).

19 The Judgment at issue here does not contain a clause indicating that time is of the
20 essence. By repeatedly accepting the benefit of these late payments, the parties established a
21 pattern of conduct in which they implicitly acknowledged a waiver of these deadlines. After all,
22 despite payment being late, Joe Lapham was not pursuing a foreclosure, and was prepared to
23 split the debt. Mr. Lapham testified at trial that he was also open to extending the maturity debt
24 for Mr. Visser's half of the loan, upon which Mr. Visser made almost no payments since the
25 mediation.

1 Under such circumstances, this Court should hold that the conduct of Douglas Visser
2 indicates a waiver of strict compliance with the deadlines set forth in the Judgment. In *King v.*
3 *Seebeck*, 20 Idaho 223, 118 P. 292 (1911), this Court long ago insisted that,

4 [T]he party claiming the benefit of a forfeiture must show himself
5 to be strictly within the terms of the instrument which confers that
6 right. He must act promptly in asserting his claim and his acts
7 relating thereto must be positive, unequivocal, and inconsistent
8 with the continuance of the contract. . . . When the defendant
9 informed the plaintiff that he was unable to pay, and wanted more
10 time, stating that he thought he could possibly raise the money . . .
11 the plaintiff, if then determined to insist upon the forfeiture, ought
12 to have said so in positive and unequivocal terms. He ought to
13 have informed the defendant that he need not make any effort to
14 raise the money as the time had passed, and the money would not
be received on Saturday if tendered. On the contrary, he carefully
refrained from giving express consent to further time, but in his
own mind did consent He permitted the defendant to engage
in another effort to raise the money in the belief that if secured the
plaintiff would accept it. This attempt to hold on to the forfeiture
and waive it does not show such candor and fairness as the
circumstances demanded. He ought to be held to this waiver.

15 *King v. Seebeck*, 20 Idaho at 233-234, 118 P. at 295, *quoting from Cue v. Johnson*, 73 Kan. 558,
16 85 P. 598 (1906). (Emphasis added.)

17 In the instant case, Douglas Visser not only accepted the payment of \$80,000 toward the
18 mortgage after the deadline for payment set forth in the Judgment, but then actively prevented
19 the Defendants from completing the financing necessary to pay the remaining \$30,000. The
20 payment of the \$80,000 significantly increased the equity in the property, equity which Mr.
21 Visser subsequently extracted when he refinanced the property without any notice to the
22 Defendants.

23 Moreover, Mr. Visser provided neither notice of his intention to declare a forfeiture, or a
24 reasonable opportunity to allow the Defendants to pay the remaining \$30,000, which they were
25 prepared to do. Rather, Mr. Visser unilaterally refinanced the debt, encumbering both Lots 1 and

1 2. His loan officer, Jeff Eich, testified that he was not asked to attempt to try to obtain a loan
2 using only Lot 1 as collateral, and made no effort to do so. Mr. Visser should not be afforded the
3 windfall of a forfeiture of all of the Defendants' investment under these circumstances.

4
5 **D. This Court Should Not Enforce a Forfeiture Where it Bears No Reasonable
Relation to the Damages Allegedly Suffered by the Plaintiff.**

6 Douglas Visser is asking this Court to require the Defendants to forfeit all of their interest
7 in Lot 2, upon which Vicki Visser and Calvin Visser reside, and to their personal possessions
8 located thereon. Actions to forfeit contractual rights of the defaulting party, pursuant to a
9 forfeiture clause, are addressed to the court's equitable discretion. *Graves v. Cupic*, 75 Idaho 451,
10 272 P.2d 1020 (1954); *Howard v. Bar Bell Land & Cattle Co.*, 81 Idaho 189, 196, 340 P.2d 103,
11 107 (1959) ("An action to quiet title is one which invokes the equity jurisdiction of the court.").
12 It is a well-established legal maxim, and one adopted by the Courts in Idaho, that "equity abhors
13 forfeitures." *Stringer v. Swanstrum*, 66 Idaho 752, 759-60, 168 P.2d 826, 829-30 (1946). Under
14 Idaho law, where the forfeiture or damages fixed by the contract are arbitrary and bear no
15 reasonable relation to the anticipated damages, and are exorbitant and unconscionable, they are
16 regarded as a 'penalty' and the contractual provision therefor is void and unenforceable. *Id.*
17 *Walker v. Nunnenkamp*, 84 Idaho 485, 491, 373 P.2d 559, 562 (1962).

18
19 As explained by the Idaho Supreme Court in the *Graves* decision:

20
21 Generally speaking, parties to a contract may agree upon liquidated
22 damages in anticipation of a breach, in any case where the
23 circumstances are such that accurate determination of the damages
24 would be difficult or impossible, and provided that the liquidated
25 damages fixed by the contract bear a reasonable relation to actual
damages. **But, where the forfeiture or damage fixed by the
contract is arbitrary and bears no reasonable relation to the
anticipated damage, and is exorbitant and unconscionable, it is
regarded as a 'penalty', and the contractual provision therefor
is void and unenforceable.** The applicable principle is set out in 1
Restatement of the Law, Contracts, § 339, as follows:

1 ‘Liquidated Damages and Penalties.

2 ‘(1) An agreement, made in advance of breach, fixing the
3 damages therefor, is not enforceable as a contract and does not
4 affect the damages recoverable for the breach, unless

5 ‘(a) the amount so fixed is a reasonable forecast of
6 just compensation for the harm that is caused by the breach,
7 and

8 ‘(b) the harm that is caused by the breach is one that
9 is incapable or very difficult of accurate estimation.’

10 *Graves*, 75 Idaho at 456-57.

11 The Judgment at issue in this case contains no indication that in the case of a breach,
12 damages could not be reasonably forecast. In fact, at trial, Douglas Visser testified as to the
13 damages he claims to have suffered. These include repairs he claims are needed to one or more
14 buildings located on Lot 1, repair to the parking lot, and the balance owing by Vickie Visser on
15 the Lapham mortgage that was paid when Douglas Visser unilaterally chose to refinance the
16 debt. The Defendants submit that Mr. Visser failed to meet his burden of proof as to the alleged
17 damages to the buildings, as he admitted at trial that he has no qualifications as a builder which
18 would justify his claims as to amounts it would cost to repair these buildings. Mr. Visser is not
19 an expert on building or parking lot repair, and his statements in this regard are not in any way
20 credible. Rather, Mr. Visser appeared to be just pulling numbers out the air. However, had the
21 Plaintiff presented expert testimony in this regard, then the alleged damages could have been
22 easily ascertainable, as they are simply the cost of the repairs.

23 As to the Lapham debt, Mr. Visser completed the refinancing on December 31, 2014.
24 Utilizing the agreed upon balance of Vicki’s portion of the loan set forth in Mr. Featherston’s
25

1 August 27, 2014, letter, the amount due as of December 31, 2014, was \$31,850.45.³
2 Consequently, the damages that the Plaintiff claims to have suffered are readily calculated. As
3 such, a liquidated damage provision is not enforceable.

4 Although not entirely clear from his testimony, it appears that Mr. Visser is asserting that
5 he incurred between \$30,000 and \$50,000 in damages as a consequence of the Defendants
6 alleged breaches of the Judgment. On the other hand, the unrefuted testimony at trial is that the
7 Defendants invested more than \$236,000 in cash, as well as countless hours of labor, into these
8 properties. The assessed value of Lot 2 according to the Bonner County Treasurer's records
9 admitted at trial identify a value for Lot 2 of \$135,036. (Ex. 10). However, Mr. Visser testified
10 that this lot is worth significantly more than a lot of similar size, as it has the added attribute of
11 being grandfathered as a wrecking yard, which would no longer be allowed anywhere near this
12 location due to zoning regulations. In addition to the complete forfeiture of this real property,
13 the Plaintiff is asking this Court to allow him to seize and liquidate all of the Defendants'
14 personal property.
15

16 These facts make it clear that this is precisely the type of situation described in *Graves* –
17 **“where the forfeiture or damage fixed by the contract is arbitrary and bears no reasonable**
18 **relation to the anticipated damage, and is exorbitant and unconscionable, it is regarded as**
19 **a ‘penalty’, and the contractual provision therefor is void and unenforceable.”** *Id.* Douglas
20 Visser is asking for a windfall – that he be allowed to keep the significant improvements and
21 investments made by the Defendant, including the significant reduction of the mortgage, without
22

23 ³ Mr. Featherston admits on behalf of Mr. Visser that as of June 18th, 2014, the balance on Vicki
24 Visser's portion of the loan was \$109,864.72. The Defendants paid \$80,000.00 on July 14, 2014.
25 Interest, therefore accrued on the \$109,864.72 at 9% per annum from June 18th to July 14th in the
amount of \$704.34, leaving a balance of \$30,569.06. Interest then accrued on this new balance
at 9% per annum from July 15th until December 31, in the amount of \$1,281.39, for a balance at
the time of the refinance of \$31,850.45.

1 having to provide any compensation whatsoever to the Defendants. Such an outcome would be
2 grossly unfair and unjust. The Court should, therefore, deny Plaintiff's Motion for Quiet Title
3 and Writ of Possession.

4 **E. Douglas Visser Waived the Condition that the Lapham Debt be Paid Prior to**
5 **Conveyance of Title to Lot 2.**

6 With regard to Douglas Visser's duty to convey Lot 2 to Vicki Visser, paragraph A(1) of
7 the Judgment requires Mr. Visser "to secure final plat approval for Lots 1 and 2, . . . provided
8 that Douglas' obligation under this subsection is *specifically conditioned* upon the Defendants'
9 performance of all other terms and conditions of this Judgment." (Ex. 17) (*emphasis added*).
10 The party to whom the benefit of a condition precedent inures may waive the condition either
11 expressly, or by acts evidencing such intention. As explained by the Idaho Supreme Court in
12 *Idaho Grimm Alfalfa Seed Growers' Ass'n v. Stroschein*, 42 Idaho 12, 242 P. 444, 448 (1926):

13 A condition precedent to the taking effect of a contract is said to be
14 waived by the conduct of the party for whose benefit such
15 condition is inserted in treating such contract as in effect, in spite
of the breach of such condition.

16 This rule is further explained in Williston on Contract – Chapter 39, Section 17:

17 It is well established that a party to a contract may waive a
18 condition precedent to its own performance of a contractual duty
19 even absent a provision in the contract expressly authorizing a
20 waiver. It is often said, as one court put the matter: "[A] condition
21 which has been inserted for the benefit of one party may be
22 voluntarily waived by that party if it wishes to proceed despite the
23 failure of the condition." Moreover, there is no rigid requirement
that the waiver of conditions be expressly made, either orally or in
writing, since conditions may be waived either expressly or
impliedly, and by acts or other conduct, by the party in whose
favor they are made.

24 Thus, when the party whose performance is subject to a condition
25 precedent waives performance of the condition, the contract
remains enforceable despite the nonoccurrence of the condition.
The waiving party's obligation to perform is thereby made

1 unconditional, and performance of the duty originally subject to
2 occurrence of the condition becomes due.

3 **The party who has waived the condition is deemed estopped**
4 **from asserting nonperformance of the condition as a defense in**
5 **an action** and cannot insist on the failure of the condition as a
ground for terminating the contract or otherwise as the basis for
asserting a breach.

6 (*emphasis added*).

7 By completing the subdivision of the property, Mr. Visser waived the condition that “the
8 Defendants perform all other terms and conditions of this Judgment.” He was then obligated to
9 convey title to Lot 2, which he refused to do. As such, Mr. Visser is in contempt of court.

10
11 **F. Mr. Visser Should be Held in Contempt of Court.**

12 By unilaterally refinancing the Lapham Mortgage using both Lots 1 and 2 as collateral,
13 Douglas Visser has interfered with Vicki Visser’s ability to acquire title to Lot 2, despite the
14 Defendants having invested more than \$236,000 of money, and countless hours, into complying
15 with the terms of the Judgment. Ms. Visser was prepared to pay the remainder of her share of
16 the Lapham mortgage through a refinance through Joe Lapham. However, because Vicki Visser
17 is not on title to Lot 2, she could not pledge that lot as collateral for the new loan. When she
18 asked Mr. Visser for title, he refused, stating that the Defendants had to first build him a new
19 road, and provide to Mr. Visser an environmental report demonstrating that Lot 1 is free of any
20 environmental issues. Mr. Visser’s attorney also sent a letter indicating that title would not be
21 provided unless these new conditions, as well as others which are also not identifies as
22 requirements in the Judgment, were completed.

23
24 The Judgment, however, requires that as soon as the subdivision process was complete,
25 Douglas Visser must allow the Lapham debt to be split, with Lot 2 to be used as collateral for
Vicki Visser’s share of the mortgage. To do this, title to Lot 2 must be conveyed at the time of

1 the refinance. The specific language in the Judgment is found at page 4, paragraph A(5), and
2 states, in relevant part:

3 The parties ***shall (upon subdivision of the property as described***
4 ***above)*** to thereupon ***divide the debt between Plaintiff and***
5 ***Defendants using the respective Parcels 1 and 2 of the platted***
6 ***property as collateral for each party's respective share of the***
7 ***Lapham obligation*** and thereby releasing and extinguishing any
8 joint liability of Plaintiff Douglas Visser and Defendant, Vicki
9 Visser on the Lapham debt.

10 (Ex. 17) (*emphasis added*).

11 The subdivision was completed on July 2, 2014. In order for this to be accomplished, the
12 Defendants paid \$45,418.77 in back taxes, and \$2,000 in subdivision costs. Vicki Visser
13 subsequently arranged with Joe Lapham for the debt to be split precisely as contemplated in this
14 provision of the Judgment. This was confirmed by the unrefuted testimony of Vicki Visser, Joe
15 Lapham, Margaret Williams, and Rex Finney. Counsel for the Defendants met with Plaintiff's
16 counsel and explained that they were prepared to split the debt.

17 Mr. Visser, however, refused, first demanding new conditions to which the Defendants
18 were not obligated, and then unilaterally refinanced the debt, and in so doing, pledged Lot 2 as
19 collateral for a \$270,000 debt. At the time of the refinancing, Mr. Visser was fully aware of his
20 obligation to convey Lot 2 to Ms. Visser, and the undisputed evidence at trial demonstrated that
21 his attorney had discussed with Defendants' counsel regarding Mr. Lapham's readiness to split
22 the debt. Mr. Visser was further aware that this Court had already ruled that the Defendants had
23 substantially complied with the Judgment. Rather than file a motion with the Court seeking
24 permission to encumber Lot 2, Mr. Visser simply obtained the refinance, without notice of any
25 kind to the Ms. Visser or Mr. Lapham, in an attempt to strip the Defendants their equitable
interest in the property.

1 As the Idaho Supreme Court instructed in *Weitz v. Green*, 148 Idaho, 851864, 230 P.3d
2 743, 756 (2010):

3 ***This Court strongly disfavors the resort to forceful self-help in***
4 ***resolving property disputes. See Burke v. Prudential Ins. Co. of***
5 ***Am.*, No. 02C5910, 2004 WL 784073, at *4 (N.D.Ill. Jan. 29,**
6 ***Doles v. Doles*, No. 17462, 2000 WL 511693, at *2 (Va.Cir.Ct.**
7 ***Mar. 10, 2000) (“[P]ublic policy favors the settlement of disputes***
8 ***by litigation rather than by self help force ...”). When parties have***
9 ***entered into a conflict over real property the rights are usually***
10 ***fixed far in advance of the exchange of attorneys’ letters, or***
11 ***subsequent filing of a lawsuit, motions, depositions, and hearings.***
12 ***Making a bold physical attempt to gain, or regain, possession or***
13 ***control of a real property interest, by demolishing or erecting gates***
14 ***or fences, bulldozing land, etc., results in no strategic advantage.***
15 ***Instead, passions become inflamed, positions become entrenched,***
16 ***damages are exacerbated rather than mitigated, and the parties end***
17 ***up spending far more money in litigation than their supposed***
18 ***interest was worth to begin with. Attorneys who counsel their***
19 ***clients to engage in self-help, without being certain that the***
20 ***respective rights and responsibilities have been settled, do their***
21 ***clients a disservice. Clients who ignore the advice of counsel and***
22 ***take matters into their own hands do themselves a disservice. In***
23 ***short, parties who attempt to solve a property dispute through***
24 ***their own forceful action do so at their own peril.***

25 (emphasis added).

The Court should order Mr. Visser to convey title to Lot 2 to Ms. Visser, subject only to
any pre-existing non-monetary encumbrances, such as easements and the like, within 21 days. If
Mr. Visser cannot purge his contempt given the new \$270,000.00 mortgage, then criminal
sanctions are appropriate. Additionally, the Court should Order that Lot 1 be immediately sold
by auction, so that the mortgage can be paid and title to Lot 2 can be conveyed free and clear to
Vicki Visser. Ms. Visser remains willing and able to reimburse Mr. Visser for that portion of the
Lapham debt that was owing by Ms. Visser at the time of the refinance, but requires free and
clear title to Lot 2 to borrow the funds necessary to accomplish this.

1 A court sitting in equity has the discretion to fashion whatever remedy is appropriate of
2 the situation. "(E)quity having obtained jurisdiction of subject matter of a dispute, will retain it
3 for the settlement of all controversies between the parties with respect thereto and will grant all
4 proper relief whether prayed for or not." *Boesiger v. Freer*, 85 Idaho 551, 563, 381 P.2d 802
5 (1962). In the case of *Sullivan v. Burcaw*, the Idaho Supreme Court explained:

6
7 Considering the admitted facts of this case and the findings of the
8 court as to the controverted facts, we think the case falls within the
9 general rule that **equity will not enforce a forfeiture**, rather than
10 within the exception to it. After learning just how much appellants
11 were in default, respondent treated the contract as still subsisting,
12 and thereafter he could not exercise his right of forfeiture without
13 giving appellants reasonable time to strictly comply with the
14 contract. Conceding that appellants were in default, respondent's
15 conduct had been such that equity should have denied him a right
16 of strict forfeiture, and should have remitted him to another
17 remedy, more equitable under the circumstances, viz. a proceeding
18 to foreclose the equity of appellant Mrs. Seeley in the contract,
19 unless she made such payments as should be found due within
20 such reasonable time as the court might fix.

21 *Sullivan v. Burcaw*, 35 Idaho 755, 208 P. 841, 844 (1922)

22 The Court may fashion whatever remedy it deems equitable. In *Thomas v. Klein*, 99
23 Idaho 105, 107, 577 P.2d 1153, 1155 (1978), the Court upheld the trial court's finding that
24 forfeiture was inequitable, and approved the Court's finding that judicial sale of the property was
25 the most equitable remedy in that case. In so doing, it explained:

26 As noted above, *Graves v. Cupic* laid down the general rules that,
27 in Idaho, equity will not generally enforce a contractual provision
28 for forfeiture and that even when such a provision is robed as
29 "liquidated damages," it will not be enforced where it is in reality a
30 penalty. **What is frequently misunderstood, however, is that these
31 general rules do not dictate a single remedy for every situation.
32 The harness must be made to fit each particular horse.** In *Graves
33 v. Cupic* itself only the original vendor and vendee were parties to
34 the suit. The vendee had made a \$14,500.00 down payment on a
35 \$50,000.00 contract only to find out shortly thereafter that she did
not qualify for a liquor license which was necessary in running the
operation. Since only the original vendor and vendee were

involved, since the default occurred only months after the contract was formed, since the vendee's down payment was grossly disproportionate to the vendor's damages, and since the vendee had no desire or resources with which to redeem her equity in the property, the proper equitable remedy was restitution. The Court therefore decreed a return of the vendee's down payment, less actual damages (rental and costs) to the vendors.

Thomas v. Klein, 99 Idaho 105, 111, 577 P.2d 1153, 1159 (1978) (*emphasis added*).

In *Walker v. Nunnenkamp*, 84 Idaho 485, 498, 373 P.2d 559, 567 (1962), the Idaho Supreme Court, explained that judicial sale is an option available to the District Court:

Under those principles as recognized and adopted by the decisions of the courts of this and other states where a contract for the sale of realty is executory on both sides and the vendee has failed to make the payments required under the contract, the vendor, in case such relief is not inequitable, is entitled to a decree fixing a reasonable time in which the vendee will be required to pay the purchase price, and upon his failure to pay such price within the time limited, the vendee, without judicial sale, will be barred and foreclosed of his equitable estate in said property, whereupon the contract will be canceled and the vendee's rights thereunder will be terminated. **If, however, the vendee has paid a considerable portion of the purchase price, or if the property has largely enhanced in value, or if, for any other reason, it would be inequitable to grant a strict foreclosure, it is within the inherent powers of a court of chancery, independent of statute, to decree that the property be sold by judicial sale, and that the proceeds of such sale, after the purchase price and the expenses of such sale have been paid, be paid over to the vendee or to those entitled thereto**

Walker v. Nunnenkamp, 84 Idaho 485, 499, 373 P.2d 559, 567-68 (1962) ("emphasis added"); see also *Rickel v. Energy Sys. Holdings, Ltd.*, 114 Idaho 585, 587, 759 P.2d 876, 878 (1988) ("[I]t is clear that a judicial foreclosure sale of the property is always an available remedy to a trial court and may well be the most equitable remedy.").

Had Douglas Visser not refinanced the property, the most equitable remedy would be to allow the Defendants to pay off the remaining balance to Joe Lapham, which they are prepared to do by means of a loan from Mr. Lapham using Lot 2 as collateral. However, because Doug

1 Visser unilaterally encumbered Lot 2, this remedy is no longer available. Consequently, the only
2 method by which to ensure that equity is done, assuming that Mr. Visser cannot simply procure
3 the release of Lot 2 as collateral for the new mortgage, is to order that Lot 1 be sold, preferably
4 by auction, to extinguish the existing mortgage. Upon the sale and the conveyance of Lot 2 to
5 Ms. Visser, the Defendants can reimburse Mr. Visser for the monies that he paid on their behalf.

6 **G. The Defendants are Entitled to an Award of Legal Costs and Reasonable**
7 **Attorney's Fees.**

8 Paragraph H of the Judgment states, "[i]n the event of any action to enforce the terms of
9 this Judgment, the prevailing party shall be entitled to a reasonable reimbursement of fees and
10 costs payable by the non-prevailing party." As set forth above, the Defendants have substantially
11 complied with every term of the Judgment with the exception of having not paid approximately
12 \$30,000 of Vicki Visser's share of the Lapham Mortgage. This failure, however, was caused by
13 Douglas Visser, when he refused to allow Lot 2 to be used as collateral in the splitting of the
14 debt, as is required under paragraph A(5) of the Judgment. Moreover, Mr. Visser's action of
15 unilaterally encumbering Lot 2 at a time in which a foreclosure action had not been initiated by
16 Mr. Lapham, constitutes an unauthorized self-help, in an effort to prevent Ms. Visser from ever
17 obtaining title to Lot 2. Clearly, Mr. Visser has breached both the express terms of the Judgment,
18 and his duty of good faith and fair dealing under it. In these circumstances, the Plaintiff is
19 entitled to an award of her legal costs and attorney's fees, pursuant to the terms of the Judgment,
20 and as a sanction for the Defendant's contempt under I.R.C.P. 75(m) and Idaho Code § 7-610.

21
22 **IV. CONCLUSION**

23
24 For the reasons set forth above, the Court should find the Plaintiff Douglas Visser in
25 contempt for willfully violating the terms of the Judgment and unilaterally interfering with
Defendant Vicki Visser's right to obtain free and clear title to Lot 2, and order that either free

1 and clear title to Lot 2 be provided, or Lot 1 sold so as to satisfy the current encumbrance. The
2 Court should retain jurisdiction over these properties until so accomplished. The Defendants are
3 also entitled to an award of legal costs and reasonable attorney's fees.
4

5 DATED this 12th day of June, 2015.

6 BERG & McLAUGHLIN, CHTD.

7
8 By: 

9 Toby McLaughlin
10 Attorneys for the Defendant/Petitioner
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF SERVICE

On June 12th, 2015, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Margaret Williams, Esq.
P.O. Box 283
Ponderay, ID 83852

Attorney for the Defendants

- ☐ By Hand Delivery
☒ By U.S. Mail
☐ By Overnight Mail
☐ By Facsimile Transmission

Brent C. Featherston
FEATHERSTON LAW FIRM, CHTD.
113 South Second Ave.
Sandpoint, ID 83864

208-263-0400

Attorneys for the Plaintiff/Respondent

- ☐ By Hand Delivery
☐ By U.S. Mail
☐ By Overnight Mail
☒ By Facsimile Transmission

Tricia Sturgis
Tricia Sturgis

1 TOBY McLAUGHLIN, ISB No. 7405
JOSH HICKEY, ISB No. 9409
2 Berg & McLaughlin, Chtd.
414 Church Street, Ste. 203
3 Sandpoint, ID 83864
Telephone: (208)263-4748
4 Facsimile: (208)263-7557

5 *Attorneys for Defendants*

2015 JUN 19 PM 4 16

CLE. [Signature]

6
7
8 IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
9

10 DOUGLAS VISSER, a married man as to his
sole and separate property,

11 Plaintiff,

12 vs.

13 AUTO ALLEY, LLC, an Idaho limited liability
company, CALVIN VISSER and VICKI
14 VISSER, as individuals in their capacity as
Members and/or Managers of Auto Alley, LLC,
15

16 Defendants.

NO. CV-2013-1045

LIS PENDENS

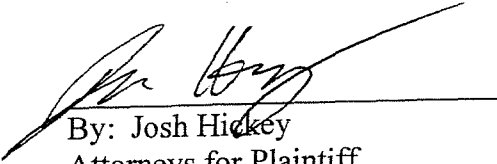
17
18 TO WHOM IT MAY CONCERN: TAKE NOTICE that pursuant to Idaho Code § 5-505, the
19 above-named Defendants hereby give notice of the pendency of an action affecting the following
20 real property in Bonner County, Idaho:

21 **Lot 2 of Ponderay Place according to the official plat thereof, filed in Book 11 of**
22 **Plats at Page(s) 20, records of Bonner County, Idaho.**

23 The Defendants are asserting a claim for specific performance of a Judgment in which the
24 Plaintiff was required to transfer title to the Subject Property to the Defendants.
25

1 DATED this 18th day of June, 2015.

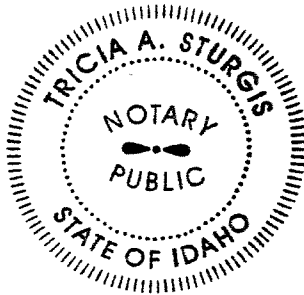
2 BERG & McLAUGHLIN, CHTD.

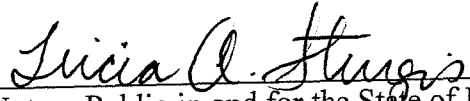
3
4 
By: Josh Hickey
Attorneys for Plaintiff

5 STATE OF IDAHO)
6) ss.
COUNTY OF BONNER)

7 On this 18th day of June, 2015, before me, a Notary Public in and for the State of Idaho,
8 personally appeared Josh Hickey, known or identified to me, to be the person whose name is
9 subscribed to the within instrument, and acknowledged to me that he/she executed the same.

10 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the
day and year in this certificate first above written.





Notary Public in and for the State of Idaho
Residing at Sandpoint
My commission expires: March 16, 2021

CERTIFICATE OF SERVICE

On June 19, 2015, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Margaret Williams, Esq. P.O. Box 283 Ponderay, ID 83852 <i>Attorney for the Defendants</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission
Brent C. Featherston FEATHERSTON LAW FIRM, CHTD. 113 South Second Ave. Sandpoint, ID 83864 <i>Attorneys for the Plaintiff/Respondent</i>	<input type="checkbox"/> By Hand Delivery <input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input checked="" type="checkbox"/> By Facsimile Transmission


Stephanie Allen

FEATHERSTON LAW FIRM, CHTD.
BRENT C. FEATHERSTON, ISB NO. 4602
 Attorney at Law
 113 S. Second Avenue
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 (208) 263-6866
 (208) 263-0400 (Fax)
 brent@featherstonlaw.com

STATE OF IDAHO
 COUNTY OF BONNER
 FIRST JUDICIAL DIST.

2015 JUN 24 A 8:10

DISTRICT COURT

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man)
 as to his sole and separate property,)

Plaintiff,)

vs.)

AUTO ALLEY, LLC, an Idaho)
 limited liability company, CALVIN)
 VISSER and VICKI VISSER, as)
 individuals and in their capacity as)
 Members and/or Managers of)
 Auto Alley, LLC,)

Defendants.)

CASE NO. CV-2013-1045

**PLAINTIFF'S POST
 TRIAL REPLY BRIEF**

COMES NOW the undersigned counsel for and on behalf of the Plaintiff, Douglas Visser, a married man as to his sole and separate property, and in response to Defendants' Post Trial Brief replies as follows:

I. FACTUAL REBUTTAL SUMMARY

The Defendants, through their new counsel, allege a number of facts which are simply unsupported by the record and/or misrepresent the testimony, the Judgment or the Mediated Settlement Agreement as follows:

DEFENDANTS' POST TRIAL REPLY BRIEF - 1

FEATHERSTON LAW FIRM, CHTD.
 ATTORNEYS AT LAW

Daniel P. Featherston
 Brent C. Featherston*
 Jeremy P. Featherston
 Jeremi L. Ossman

113 S. Second Ave.
 Sandpoint, ID 83864
 Phone (208) 263-6866
 Fax (208) 263-0400

*Licensed in Idaho & Washington

1. There is no evidence that Douglas Visser at any time "refused to convey Lot 2 or allow it to be used as collateral for the loan". Post Trial Brief, pp.1-2 In fact, there is no evidence in the record that the Defendants ever demanded a conveyance of Lot 2. Defendants were aware they had failed to comply and that the Judgment and Mediated Settlement Agreement required them to comply before Douglas was to convey Lot 2. Margaret Williams testified that in June and August, counsel met with attorney Rex Finney and Joe Lapham and to calculate the amount of the Lapham obligation and a division between Vissers.

Defendants' new counsel argues that the August 27th letter establishes an "agreement" that Vicki's remaining obligation was only \$29,864.72 (\$109,864.72 less \$80,000.00). The testimony established that after the June 18th hearing, Panhandle Escrow posted additional accrued interest, which is discussed throughout the email string admitted as Plaintiff's Exhibit 25. Regardless, the August 27th letter concludes, "Please arrange for Vicki to pay her share of the balance off within twenty-one (21) days". Plaintiff's Exhibit 4.

Defendants failed and/or refused to respond.

Douglas never refused to deed Lot 2. Exhibit 4 makes clear Douglas' position. "If she is borrowing these funds from Joe, then my understanding is that Joe will simultaneously release Lot 2 from the existing mortgage and thereby release Vicki from that obligation with the balance to be secured only by Lot 1 and paid by Doug." Exhibit 4 also offers to have Douglas execute a deed to Lot 2 to place in escrow until payment. There was no response of any nature from Defendants' counsel. The next communication is Lapham's directive to pay off the debt by October 14, followed by Mr. Finney's inquiry about accepting service of a foreclosure suit in November, 2014.

FEATHERSTON LAW FIRM, CHD
ATTORNEYS AT LAW

Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman

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Phone (208) 263-6866
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DEFENDANTS' POST TRIAL REPLY BRIEF - 2

There was never a demand made for Lot 2 because there was never performance by the Defendants entitling them to a conveyance of Lot 2.

2. There is no testimony to support Defendants' allegation "that the loan could not be made without title to Lot 2 being transferred to Ms. Visser at the closing of the refinance, which Mr. Visser refused to do, until Ms. Visser performed additional tasks." Post Trial Brief, p.4. The August 27th letter does contain demand that Vicki pay her share of the Lapham obligation. It offers to provide a deed in escrow until that is completed. It even references the suggestion that she might obtain a new loan from Joe Lapham. What is totally absent from the record is any indication that the loan was ever funded or escrowed for closing. Mr. Lapham could not produce loan documents, applications or correspondence. Attorney Margaret Williams could not produce correspondence, loan documents, or a demand for deed at closing. Ms. Jackie Fuqua testified that there was no correspondence in the escrow file indicating that a request for payment, attempted payoff or new loan. She further testified that they had no separate escrow file for a new loan to Vicki other than the new loan opened December 31st for Douglas.

There simply is no evidence to support the Defendants' contention that they were deprived of an opportunity to finance or pay off their share of the Lapham note. What actually appears from the evidence is the Defendants ignored the deadline, ignored the August 27th letter and Mr. Lapham threatened foreclosure forcing Douglas to refinance the property. Jeff

Eich testified that the financing required over \$270,000.00 to pay off the Lapham note, pay back taxes, pay sewer assessments and unpaid sewer bills (incurred by the Defendants) together with loan fees.

DEFENDANTS' POST TRIAL REPLY BRIEF - 3

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3. There is no basis for the Defendants' contention that the Mediated Settlement Agreement only triggered a default if "the Defendants failed to make the \$3,500.00 monthly payments that were due in the months of October, 2013, through March, 2014." Post Trial Brief, pp.4-5.

Defendants' new counsel seeks to rewrite the Mediated Settlement Agreement to override the Court's Judgment. Based upon that argument, they assert full compliance by making the six (6) monthly payments relieving Defendants of all other obligations in the Judgment. A reading of the Mediated Settlement Agreement indicates that it was the parties' expectation that Mr. Lapham would allow them to split the debt and attach it to Lots 1 and 2 with each party being then solely responsible for their half of the debt after this was accomplished.

Mr. Lapham's attorney, on August 29, 2013, just two (2) weeks following mediation, communicated that Mr. Lapham would not cooperate with the Mediated Settlement Agreement in dividing the debt. Plaintiff's Exhibit 30. Based upon this, the parties agreed to the February 19, 2014, Judgment. Exhibit 17.

Using counsel's logic, a look at the Mediated Settlement Agreement reveals it also required Vicki to pay all back taxes by December 31, 2013, which she did not do. Both the Judgment and the Mediated Settlement Agreement required Vicki to pay her half of the Lapham debt, inclusive of interest and fees, by June 30, 2014. This deadline was in effect since the mediation in 2013.

Defendants argue that Douglas is not entitled to the relief of quiet title and writ of possession except upon Defendants' failure to make the six (6) \$3,500.00 monthly payments from October through March. That misrepresents the Mediated Settlement Agreement, which

DEFENDANTS' POST TRIAL REPLY BRIEF - 4

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provides "Plaintiff agrees to convey to Defendant, Vicki Visser, a portion of the real property depicted as Lot 2 on Exhibit A attached hereto and commonly referred to as the back half upon the express condition that Defendants fully perform all of their obligations as set forth hereafter." Exhibit 31, Section A. From the beginning, throughout the Mediated Settlement Agreement, it was incumbent upon Defendants to perform all of the conditions before receiving title. Because the Defendants are in occupation of the premises and they have now failed to meet those obligations more than a year later, Douglas is entitled to receive judgment of quiet title and writ of possession (the only relief that is available to him) both under the terms of the Mediated Settlement Agreement and the February 19, 2014, Judgment and as a matter of law.

II. ARGUMENT

A. Res Judicata

Defendants assert the defense of *res judicata* should apply to this proceeding based upon the Court's Order dated May 5, 2014, following the April 23, 2014, hearing. Those proceedings were based upon the Defendants' failure to vacate Lot 1 (or even make substantial progress moving off of Lot 1) by the March 31st deadline. Also addressed in that hearing was damage occurring during the moving process, as reflected in numerous photos showing mud ruts and damage to building while Defendants hurriedly attempted to move out after the March 31st deadline. The Court's own findings at that hearing were that Defendants only attempted to substantially comply after the deadline and Douglas filed his motion.

In this matter, the Defendants argued *res judicata* and cite the Court to Adolpe v. Akins. However, Adolpe has received negative treatment since its issuance by the Idaho Supreme Court in Diamond v. Farmers' Group, Inc., 119 Idaho 146, 804 P.2d 319 (1990).

DEFENDANTS' POST TRIAL REPLY BRIEF - 5

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A key component to *res judicata* is that the Complaint and facts upon which the claim arise must be one "which might and should have been litigated in the first suit". Diamond v. Farmers' Group, Inc., 119 Idaho 146, 151, 804 P.2d 319, 324 (1990); quoting Joyce V. Murphy Land Company, 35 Idaho 549, 553, 208 P. 241 (1922).

More to the point "the doctrine of *res judicata* extends only to facts and conditions as they existed at the time the judgment was rendered and, ordinarily, *res judicata* does not apply where there are changed conditions and new facts, which did not exist at the time of the prior judgment." Erickson v. Amoth, 105 Idaho 798, 801, 673 P.2d 398, 401 (1983); quoting Milbourne v. Milbourne, 86 Idaho 213, 219, 384 P.2d 476, 479 (1963) [summary judgment reversed and remanded for further proceedings].

As indicated by the record, the April, 2014, proceedings initiated after Defendants failed to meet their March 31st move out deadline. The Court noted that they "substantially complied as of the hearing on April 24th, but only as a result of Douglas filing the motion and ordered the Defendants to pay attorney's fees, rent of \$5,000.00 for the month of April and to fully vacate the premises by April 30th".

Since that hearing, the Defendants have failed to fully vacate the premises by the April 30th deadline, failed to pay the Joe Lapham debt, failed to restore the premises and repair building damage and parking lot damage, failed to pay all current and delinquent real estate taxes, failed to provide proof of restoring any environmental contamination or damage, and continued to occupy Lot 1 by first using an undesignated easement road through the middle of Lot 1 without Douglas' permission and then using the back half of Lot 1 on an unauthorized access road to Lot 2.

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DEFENDANTS' POST TRIAL REPLY BRIEF - 6

All of these facts are new facts or conditions which did not exist at the time of the April, 2014, hearing. *Res judicata* does not apply and the Court should reject this argument.

B. CONVEYANCE OF LOT 2 IS NOT REQUIRED UNLESS DEFENDANTS FULFILL AND SATISFY ALL TERMS OF THE JUDGMENT

Beginning at page 11, Section B of Defendants' Post Trial Brief, Defendants assert that they are entitled to Lot 2 because they have fulfilled the requirements of the May 5, 2014 Judgment Re Writ of Possession and Quiet Title. This argument is both confusing and representative of the Court's Judgment in this matter. The operative Order at issue in this proceeding is the Court's Judgment entered February 19, 2014, and admitted as Exhibit 17. Defendants' counsel's assertion that fulfilling the May 5 Judgment acts as fulfillment of the Defendants' requirements and entitles them to conveyance of Lot 2 is simply misrepresentative of the Court's Order.

It seems Defendants overlook the clear language contained in the Court's May 5, 2014, Order as follows:

7. The Court will reserve ruling until further hearing as to issues concerning damages to the premises and all other issues that may arise from the Court's Judgment entered February 19, 2014.

Exhibit 17

Defendants have misled this Court by asserting a frivolous argument that the May 5, 2014, Order has been fulfilled and thereby subsumes any requirement to comply with the February 19, 2014, Judgment. This Court should deny the Defendants' relief as requested in regard to *res judicata* and compliance with the May 5th Order.

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DEFENDANTS' POST TRIAL REPLY BRIEF - 7

C. DEFENDANTS' COMPLIANCE

Without repeating all that has been said in the prior briefing and at hearing, the Defendants have simply not complied with the February 19, 2014, Judgment.

There is no need to reiterate the numerous aspects in which they have not complied and despite the Defendants' counsel's strenuous and multiple-page argument otherwise, it is, without question, that Defendants:

- did not pay their share of the Lapham debt (despite repeated requests up to and past the June 30th deadline)
- did not pay all taxes as required (and then made up a false story under oath as to why the remaining \$1,000.00 had not been paid timely)
- did not restore damage to the property caused by them (and, again, lied on the stand as to the cause of that damage being pre-existing)
- did not vacate Lot 1 on the Court's extended deadline provided in its May 5, 2014, Order
- did not restore the damage to the driveway, parking lot and other premises as required
- and did not provide proof that the environmental contamination had been adequately restored following the Defendants' crushing of vehicles in the winter and spring of 2013-2014.

Additionally, although clearly not as significant, the Judgment is very specific that the Defendants' crushing activity was permitted on condition that "all proceeds" were to be "paid directly to the trust account of Brent Featherston less reasonable costs and business expenses associated therewith". It is undisputed that this term was not complied with and, as a

result, the Plaintiffs have no accounting for Defendants' use of the funds gained in the crushing. The language contained in Paragraph 6 of the Judgment was designed to manage the process in which the Defendants vacated the premises so as to ensure that all crushing funds (less expenses) were applied to the Lapham debt. Defendants unilaterally deviated from that

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term and paid those funds as they deemed fit. However, those funds were admittedly inadequate to satisfy the Lapham Debt.

1. Environmental Study

Defendants argue that they have no obligation to do anything except provide a Phase I Environmental Report and that they have no obligation to correct any contamination revealed by the Report. This defies logic but also misrepresents the Judgment. The Court's Judgment provides that the Defendants "shall be liable for any damage to the premises and shall take measures in vacating the premises to avoid causing damage to the property." Exhibit 17, pp.5-6. The language quoted above is all inclusive and places the entire responsibility for clean up and repair of any damage to the property upon the Defendants. The Judgment later states, "It is understood that the Defendants' obligations to restore the premises and to conduct a Phase I Environmental Study as set forth above, shall be specifically limited to and shall apply to Lot 1." Exhibit 17, p.6 [underline added].

A reasonable and plain reading of the Judgment provides that the Defendants are responsible for cleanup and restoration of the premises and that they are liable for any damage caused by them to the premises. This reading of the Judgment is borne out by Defendant, Vicki Visser's, conduct. Vicki testified that she cleaned up the contamination sites identified in the Phase I Study by digging up the soil and depositing it in the crusher to be hauled away.

If the Defendants did not believe they were responsible for cleanup of contamination identified by the Phase I, why did Vicki Visser make the effort to do so, especially under the time constraints that were obvious in this case?

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DEFENDANTS' POST TRIAL REPLY BRIEF - 9

Furthermore, the plain language of the document and common sense should be applied to note that it is the Defendants' responsibility to have completed the cleanup and to provide proof thereof.¹

2. Failure to Pay the Lapham Note

Beginning at page 17 of Defendants' Post Trial Brief, they assert that Vicki Visser "paid nearly all" of her half of the Lapham debt. Setting aside for the moment that that is not what the Judgment provided, nor is this a case of "close enough", it should be remembered that Vicki left an unpaid balance of \$34,470.00 according to the testimony of Jackie Fuqua from Panhandle Escrow. This did not account for the total \$5,000.00 in rent payment applied May 5, 2014, according to Jackie Fuqua, which should be credited to Douglas by Vicki's own admission, it also does not account for the \$5,000.00 payment in October, 2013, which the parties stipulated in and the documentation was to be credited to Douglas, bringing the total balance to \$44,470.96. See Exhibit 17, p.4, § 5 and Exhibit C, p.3, § 2.

It is hard to imagine at what threshold the Defendants consider a short fall of \$44,470.00 to be "close enough". Forty-four thousand dollars (\$44,000.00) is a significant sum of money owed and the Defendants well knew the implications of not paying it by the June 30th deadline, let alone six (6) months later on December 31st.

Also, the Defendants were well aware of the implication of Mr. Lapham's ability to foreclose on Lot 1 taking Douglas' interest in the property first for application on the Note before pursuing Lot 2.

¹ Interestingly, Plaintiff's repeated requests on this issue were ignored or not responded to by the Defendants. First information of Vicki Visser's attempted cleanup of the contamination was gained through the May 28th and May 29th hearing testimony.

Lastly, all parties were aware that the Lapham debt was all due and payable October 12, 2014, (Exhibit B) and that a Notice of Default issued August 14, 2013, was continuing to hang over the parties' heads (Exhibit A) and that Lapham's counsel had stipulated "that the current default would remain in place" (Exhibit 30) and that Lapham had refused to extend the Note payoff deadline on August 29, 2014 (Exhibit 23).

It also is puzzling that a condition of Mr. Lapham's cooperation (Plaintiff's Exhibit 34) requires "timely" compliance with the terms and conditions of the parties' settlement, yet Vicki Visser had not paid off the debt more than six (6) months after the June 30th deadline.

Defendants argue that Douglas "refused to transfer the title to allow Lot 2 to be used as collateral for a new loan". Defendant's Post Trial Brief, p.18. There are absolutely no facts in the record to support this assertion. The last correspondence in an attempt to gain performance on the Judgment was Douglas' communication through counsel on August 27, 2014. Vicki and counsel ignored this communication for more than four (4) more months.

Defendants argue that the August 27th correspondence imposed new conditions on Vicki that were not part of the Judgment. A careful read of the August 27th letter reveals that there was no "condition", but simply a recap of discussions that had been had up until that date. Regardless, the Defendants, through their counsel, neither responded nor objected to the August 27th correspondence, nor did they attempt to perform on the obligations contained in the Judgment.

There is no evidence to support Defendants' assertion that Douglas "improperly interfered with the Defendants' ability to pay off Vicki Visser's share of the Lapham mortgage". Indeed, there is no evidence that Ms. Visser ever attempted to pay off the Lapham

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debt, only assertions that she had arranged for a loan through Mr. Lapham, but apparently took no action to fund or close the loan or pay off the original debt.

Defendants argue that Douglas' requirement that a deed would only be delivered if the Defendants "perform on the requirements of our agreement" (Exhibit 4) is some form of interference. In fact, the Judgment requires Vicki Visser to perform before receiving the deed. Douglas was simply upholding the terms of the February 19, 2014, Judgment, unlike Defendants.

It is puzzling at best to discern Defendants' argument on this point: Are the Defendants suggesting that Mr. Visser was to deliver the deed despite Defendants' failure to pay over \$44,000.00 of the obligation? Was Douglas to simply trust that the Defendants would pay off the remaining debt with another loan from Mr. Lapham? In truth, it seems that Douglas' trusting nature is the reason he finds himself in this position.

There is no record of, nor facts to support, an attempt to perform by Vicki. No escrow was opened, no loan documentation produced, and no attempt to pay off the loan by the June 30th deadline by the October 14th balloon payment deadline, or at any time prior to the December 31st refinance by Douglas. In fact, Defendants have not tendered performance by payment even as of the current date.

3. **There is no evidence that Plaintiff has waived compliance with the Judgment.**

~~Defendants raise an entirely new defense, one not argued at trial nor pled, of waiver.~~

The assertion seems to be as follows:

1. That "all of the payments made by the Defendants were late either because Mr. Featherston's office did not relay the payment or because the Defendants were late in paying."

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2. That Douglas "accepted" these late payments, thereby benefitting by increasing equity in the property.

This argument is fallacious.

First, there is no evidence that payments were late because of counsel's delay in forwarding them to escrow. There were payments that were made late by the Defendants, but all payments were relayed to escrow as soon as received, and there is no evidence in the record to the contrary.

Second, there is no indication that Douglas "accepted" late payments. Douglas did not accept the payments. The escrow company received payments pursuant to the Judgment and Mediated Settlement Agreement. It would seem that counsel's argument is that Douglas should have declared the default on the Settlement Agreement and/or Judgment at each and every time Vicki was late in making payments from October through March. While it is true the Defendants were late in their payments, that has consistently been their pattern of performance with regard to all aspects of the Judgment and Mediated Settlement Agreement. As Douglas testified at trial, he has finally come to the conclusion in the fall of last year, facing foreclosure from Mr. Lapham, that "enough was enough". None of these facts constitute waiver.

"Waiver is a voluntary, intentional relinquishment of a known right or advantage."

Seaport Citizen's Bank v. Dippel, 112 Idaho 736, 739, 735 P.2d 1047, 1050 (App.1987).

To establish a waiver, the intent of the party to waive his rights must be clearly evident from the facts.

"Waiver will not be inferred except from a clear and unequivocal act manifesting an intent to waive, or from conduct amounting to estoppel. Where a waiver arises out of conduct

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and partakes of the nature of an estoppel, no consideration is necessary.” Seaport Citizen’s Bank, supra.

“The doctrine of implied waiver by silence is disfavored.” Id. See also Joan v. Maestas, 108 Idaho 69, 696 P.2d 920 (App.1985).

Contrary to the Defendants’ assertion, nothing from the record evidences Douglas’ intent to waive his claim for strict compliance to the deadline in the Judgment. Douglas asserted those deadlines in the April proceedings resulting in the May 5, 2014, Order. Further, Douglas, through counsel, sought the Defendants’ compliance prior to the deadlines and after the deadlines in an attempt to accomplish performance of the Judgment by both sides. His attempts were ignored by the Defendants to his detriment under threat of foreclosure from Mr. Lapham.

The Defendants cite the Court to Sullivan v. Burcaw, a 1922 case that, frankly, has no factual bearing in this instance. The Burcaw case appears to be a contract containing a “time of the essence” clause and other provisions that required notice of default before forfeiting the vendee’s interests.

For starters, the deed for contract mechanism discussed in the 1922 Sullivan case has been severely modified by the Court’s holdings in Graves v. Cupic and related case law since. Secondly, this case presents completely different circumstances. The Defendants were not entitled to Lot 2 and had no right to Lot 2 unless and until they fully performed the terms of the Judgment. The Defendants were on notice that failure to perform is at their peril.

Frankly, it defies logic that the Defendants would crush vehicles and raise funds sufficient to pay some of the obligation, but not all, and thereby leave an outstanding balance of \$44,000.00 unpaid, delinquent and in default under threat of foreclosure. The only logical

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explanation for the Defendants' behavior is their knowledge that only Mr. Visser faced the jeopardy of losing Lot 1 by their delinquency and non-performance. If, in fact, it is true that the Defendants had arranged for a Lapham loan on Lot 2, this would have permitted the Defendants to effectively deprive Mr. Visser of his home, his property and his equity while permitting them to retain Lot 2 and decline to perform as required by the Judgment.

The Defendants also argue that this result would act as a forfeiture. Forfeiture is discussed at length in the following section of this Reply Brief, but it is without question that this is not an event of forfeiture. Again, citing to a 1906 case of King v. Seebeck, the Defendants argue a contract for deed transaction that discusses forfeiture and waiver. As discussed in the following section, there is no forfeiture where the party claiming the equitable remedy has acted with unclean hands or where the payments made to date equate to the other party's liquidated damages. As indicated below, the Defendants argue that they are facing a forfeiture of nearly \$200,000.00 in payments. The Defendants conveniently overlook ten (10) years of failing to meet their rental obligation by paying the Lapham debt which ballooned from \$111,000.00 to over \$300,000.00, failing to pay real estate taxes nearly jeopardizing Douglas' ownership in the property, and all the while occupying the entire premises for their business and residential purposes, which premises have a fair market rental value of in excess of \$72,000.00 per year.

Lastly, there is no forfeiture in this instance because the Defendants had not right, title or interest in Lot 2 except as provided for in the Judgment. The Divorce Decree between Douglas and Vicki awarded all of the property to Douglas. As stated on the record, Defendants' counsel admits that there was a verbal understanding ten (10) years ago that the property would be split and Lot 2 deeded to Vicki, but that such agreement was

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"unenforceable" under the statute of fraud, parol evidence rule and virtually every other applicable real property law. This Mediated Settlement Agreement and Judgment was Douglas' last attempt to honor a verbal promise made ten (10) years ago, if the Defendants would simply pay the debts incurred by them.

It should be noted that this Judgment, had it been performed by the Defendants, would have no way placed Douglas in the position originally bargained for ten (10) years ago of owning Lot 1 subject only to the Lapham debt of \$111,000.00. Not mentioning the legal fees and expenses of this litigation, the Defendants have cost Douglas tens of thousands of dollars in increased debt to Lapham, interest, fees, taxes paid by Margaret Visser, and credit damage as testified to by Jeff Eich, etc.

There is no waiver by Douglas of the provisions of the Judgment as shown by the evidence at trial. There is no "windfall of a forfeiture" because of the Defendants' actions. Defendants' Post Trial Brief, p.22. It is unimaginable to suggest that Douglas having to refinance the Lapham obligation by taking out a loan of \$270,000.00 inclusive of loan and origination fees, unpaid utilities services to the Defendants and under the threat of foreclosure from Lapham is a "windfall" to Douglas.

Had the Defendants performed on the current Judgment, Douglas could have and would have sold Lot 1 in 2014 thereby paying off his share of the Lapham debt, an opportunity that he was deprived of due to the Defendants' failure and refusal to perform under the Judgment.

For the reasons set forth above, there is no forfeiture, nor is there any evidence of a waiver of the terms and conditions of the Judgment. The Court should find in favor of the Plaintiff, Douglas Visser.

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D. Forfeiture

The Defendants argue that they have invested over \$236,000.00 in complying with the Court's Judgment that if relief as provided for in the Judgment, is granted to Douglas, it would be a forfeiture. Defendants conveniently overlook several key facts:

1. The original rental agreement provided that Defendants were to service the Lapham debt by making interest payments, paying the taxes and paying insurance. Further, the undisputed testimony was that the agreement originally applied only to Lot 2 and later added use of just the warehouse. By the time this case was filed in May, 2013, the Defendants occupied all of the property, including storing personal belongings in Douglas' home on the west corner of Lot 1 on the highway.

2. Defendants allowed the debt to compound from \$111,000.00 to approximately \$300,000.00 as of the Mediated Settlement Agreement. Further, the Defendants failed to pay taxes on the property leaving it in jeopardy of County tax deed in 2013. As a result, Douglas' wife, Margaret Visser, was required to pay from her personal funds the oldest tax obligation to avoid loss of the property. Now, the Defendants claim an inequitable forfeiture would result if they had to pay the Lapham debt, be responsible for increase, or pay the \$45,000.00 of back taxes that they were obligated to pay under the terms of their rental agreement.

3. The Defendants argue to this Court that they have paid \$149,00.00 to the Lapham debt and that constitutes a forfeiture. Defendants conveniently overlook it was the

Defendants that paid no rent and failed to service that Lapham debt over the ensuing years, allowing it to nearly triple in size.

There is no forfeiture when the Defendants fail to make the payments and had full occupancy and use of the entire property from 2005 to 2015, a period of ten (10) years.

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Douglas testified that many years ago, he was offered \$1,700.00 a month for rent of the warehouse and estimated that the middle building was worth \$800.00 a month, the silver building was worth \$500.00 a month and that the remaining six (6) acres (for its use as a wrecking yard) would fetch at least \$500.00 per acre for a total of \$3,000.00 per month. All total, the Defendants' use of just Lot 1 (not including their storage of personal belongings and use of Douglas' residence) amount to \$6,000.00 per month fair rental value or \$72,000.00 per year.

The "forfeiture" as claimed by the Defendants of having to pay \$149,000.00 after paying nothing for ten (10) years is absurd. The \$149,000.00 amounts to just over two (2) years of fair rental value for the premises used and occupied by Defendants over the past ten (10) years.

Further, with regard to taxes and insurance, it is common knowledge that commercial property is ordinarily leased on a triple net basis requiring the tenant to pay fair rent and all taxes, insurance and assessments on the property, something the Defendants have failed to do in this case for nearly a decade.

The closing statement of December 31, 2014, reflects that the Defendants did not even pay the Kootenai/Ponderay Sewer District service bills for the period of July through December. Although a relatively minor amount of \$692.08 (Plaintiff's Exhibit 5, p.4), it does reflect the Defendants' mindset of entitlement with no responsibility.

Defendants' counsel cites the Court to Graves v. Cupic, for the premise that a court of equity "abhors forfeitures". Graves v. Cupic, 75 Idaho 451, 456, 270 P.2d 1020, 1023 (1954). However, in the sixty (60) years since Graves v. Cupic, the Supreme Court has certainly expressed and discussed more fully this notion of forfeiture and it is certainly not absolute.

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"Parties to an agreement may fix damages in the event of breach, but this power is not without limits. Modern courts continue to refuse to enforce contract clauses that appear designated to deter a breach or to punish the breaching party rather than compensate the injured party for damage occasioned by the breach." Melaleuca, Inc. v. Foeller, 155 Idaho 920, 927, 318 P.3d 910, 917 (2014).

"Indeed, if a forfeiture is simply a penalty invoked as a result of conduct of one of the parties, the forfeiture will not be allowed." Id.

"In Idaho where the forfeiture or damage fixed by the contract is arbitrary and bears no reasonable relation to the anticipated damage, and is exorbitant and unconscionable, it is regarded as a penalty and the contractual provision therefore is void and unenforceable." Melaleuca, supra, quoting Graves v. Cupic, 75 Idaho at 456.

Although this case does not explicitly contain a contract or a contract provision with a liquidated damages clause, the analysis is the same as raised by the Defendants in their forfeiture argument. In other words, are the Defendants "punished" by the result provided for in the Court's February, 2014, Judgment, or does it simply compensate Douglas for his injuries?

As discussed above, the Defendants have not paid rent for nearly a decade or did so inconsistently. They clearly did not pay the taxes allowing them to fall into a tax default status of more than three (3) years and jeopardizing loss of the property. Douglas' new wife, who has no ownership interest in the property, put up her own funds of nearly \$15,000.00 to avoid loss of the property in the spring of 2013. The Judgment required Defendants to pay all current and delinquent taxes by the end of January, which they did not do, but that measure is simply meant to compensate Douglas under the original rental agreement, which required the

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Defendants to do so. The fact that it cost the Defendants \$45,000.00 is not a forfeiture. It is a responsibility as tenants, both under the verbal rental agreement, but also under any commercial triple net lease and the Judgment in this case.

Likewise, the Defendants were required to service the Lapham debt beginning in 2005 when they took occupancy of the premises. The Lapham debt began as a loan of \$111,500.00 and by the time of the filing of this action and going to mediation, it had grown to almost \$300,000.00. See Plaintiff's Exhibit 31.

The fact that the Defendants were required to pay \$149,000.00 towards that Lapham debt is scarcely a penalty, when it was their obligation to keep that debt serviced for more than the ten (10) years that they occupied the property. They did not do so, and, in fact, the penalty, if any, has been borne by Douglas, who, at the end of the day, owed Lapham significantly more than the \$111,500.00 in the original loan. Further, Douglas was required to obtain a new loan and according to Jeff Eich paid dearly for that loan because of the terrible payment history in the Lapham escrow. The new loan cost Douglas \$26,340.58.

The fair rental value of the property as occupied by the Defendants (just Lot 1 and its building) is \$72,000.00 per year. By failing to make any payments over the past ten (10) years, the debt was compounded almost three (3) times its original principal, Douglas' credit suffered and the Defendants now claim forfeiture because they were required to finally pay \$149,000.00, just two (2) years' worth of rent.

The Defendants' claims in equity that forfeiture should prohibit enforcement of the Court's Judgment are also barred because the Defendants come to this Court with unclean hands.

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"The doctrine of 'unclean hands' is based on the maxim that 'he who comes into equity must come with clean hands'. It allows a court to deny equitable relief to a litigant on the grounds that his or her conduct has been 'inequitable, unfair and dishonest, or fraudulent and deceitful' as to the controversy at issue." Sword v. Sweet, 140 Idaho 242, 251, 92 P.3d 492, 501 (2004); quoting Gilbert v. Nampa School District No. 131, 104 Idaho 137, 145, 657 P.2d 1, 9 (1983).

In determining whether to apply unclean hands, the Court has the discretion to evaluate the relative conduct of both parties and to determine whether the conduct of the party seeking inequitable remedy would preclude such equitable relief.

In this case, the Court has already visited this matter twice by the Defendants. The first time, the Defendants failed to meet the move out deadline of March 31st and the Court made a finding that their efforts to move out were largely as a result of Douglas' motion filed in early April. If you will, the Court gave Defendants a second chance to comply with the Judgment, which they have since squandered.

The Court also addressed this issue on the Defendants' motion to open an unauthorized access road through the middle of Lot 1. The Defendants brought a motion regarding Douglas blocking the access road. Douglas required them to use the platted means of access along the east boundary of Lot 1 to access Lot 2. Ultimately, the Court declined the Defendants' request

for relief and Douglas testified that despite this ruling, he reopened the access temporarily from June 1st through October 31st as a concession to Defendants and in hopes that they would further comply with the Court's February, 2014, Judgment.

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When Douglas submitted a proposal to the Defendants that he could sell all of the two (2) Lots and pay over \$200,000.00 to the Defendants for their interest under the Judgment in Lot 2, that offer was declined. Douglas indicated under cross examination that he was not angry. He simply decided that "enough was enough" when it came to the Defendants' continued refusal to comply with the Court's Judgment and re-blockaded the unauthorized roadway. In response, the Defendants have since used the neighbor's property, presumably without easement, as a means of accessing the back of Lot 1 and continue to use unauthorized access across Lot 1 to enter Lot 2, thereby still "occupying" Lot 1 in violation of the Court's Order.

The Defendants are before this Court with unclean hands. They have repeatedly failed and/or refused to comply with the terms of the Court's Judgment including failing to pay taxes, failing to move out timely from Lot 1, causing damage, which they deny, refused to repair and continuing to use whatever portions of Lot 1 that Douglas not blockade. Furthermore, they do not pay their basic utilities or meet the significant Judgment obligation of paying their share of the Lapham debt. As such, they come before this Court with unclean hands and should be denied the equitable argument of forfeiture that they assert to this Court.

E. DID DOUGLAS WAIVE THE CONDITION OF PAYMENT PRIOR TO CONVEYANCE OF LOT 2?

On this issue, Defendants again misconstrue the Judgment to argue Douglas waived the ~~condition that Vicki pay the Lapham debt prior to receipt of a deed to Lot 2 because Douglas~~ proceeded with platting the property.

The Judgment, ¶A(1), requires Douglas to complete a plat of the property that he started years before this lawsuit. Douglas was only required to complete the plat if Vicki performed all other conditions of the Judgment.

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Further, as discussed in the next section below, the parties were forced to modify their Mediated Settlement Agreement and Judgment when Lapham refused to split the debt upon completion of the plat. Instead, Douglas was required by the modification to complete the plat by June 30th and Vicki was still required to pay her one-half of the loan balance, all of which is contained in the Amendment, Modification and/or Correction of Deed of Trust and Promissory Note, ¶3. Exhibit C.

Defendants argue that because Douglas completed the plat, he waived compliance with the Judgment. The Judgment requires the plat be completed and Vicki pay off her share to Lapham on the same deadline, June 30th.

Obviously, it is not a condition precedent if it is simultaneous.

Further, the Judgment does not prohibit Douglas from patting the property even if Vicki fails to perform.

There is no waiver of Vicki's obligation to pay her share of the Lapham debt simply because Douglas platted the property.

F. CONTEMPT

Second, contempt is an extraordinary proceeding and should be approached with caution. This court has recognized contempt as an extraordinary proceeding ... readily susceptible of abuse and fraught with danger not only to personal liberties but to the respect and confidence which our courts must maintain It should be exercised with utmost caution. Since contempt citation is a potent weapon, courts rightly impose it with caution. Imposing a willful standard ensures that courts cannot abuse their inherent contempt power. It also ensures that courts only impose such an extraordinary remedy when the alleged contemnor has wrongfully disobeyed a court order.

In re Weick, 142 Idaho 275, 281,
127 P.3d 178, 184 (2005).

There is no court order requiring Douglas to convey Lot 1 to Vicki. The Judgment explicitly requires Vicki to fully and completely perform all of the obligations before receiving title to Lot 2.

Defendants argue that Vicki is entitled to Lot 2 after the subdivision plat was complete. Defendants argue that this provision is found in ¶A(5), which discusses division of the debt between Plaintiff and Defendants. Defendants ignore ¶A(6), which stipulates that subdivision is "subject to Lapham's approval of the modification, ... set forth in the preceding paragraph." Exhibit 17.

As evidenced in Plaintiff's Exhibit 30 and Defendants' Exhibit C, Lapham refused to divide the debt or release Lot 2. The Amendment, Modification and/or Correction of Deed of Trust and Promissory Note required Douglas to complete the subdivision by June 30, 2014, and upon receiving fifty-percent (50%) of the loan balance, Lapham agreed to seek collection first against Lot 1 and then against Lot 2, should Lot 1 fail to satisfy the debt.

As can be seen from the correspondence from Mr. Finney and the subsequent modification document, Lapham did not agree to division of the debt, and the parties agreed to modify the requirements under the Judgment, which the Defendants failed to perform.

There is no basis for contempt against Douglas and the Court should dismiss Defendants' Motion.

III. CONCLUSION

This Court should find in favor of Douglas Visser entering Judgment of quiet title and writ of possession. Douglas is entitled to an award of attorney's fees and costs pursuant to the terms of the Judgment and under Idaho law as will be shown by a Memorandum of Fees and Costs.

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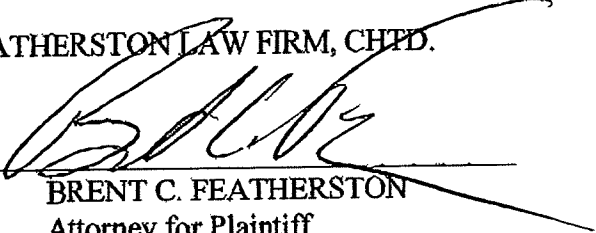
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DATED this 23rd day of June, 2015.

FEATHERSTON LAW FIRM, CHTD.

By


BRENT C. FEATHERSTON
Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on the 22nd day of June, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person in the following manner:

D. Toby McLaughlin, Esq.
BERG & McLAUGHLIN, CHTD.
414 Church Street, Suite 203
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- ☐ U.S. Mail, Postage Prepaid
- ☐ Overnight Mail
- ☐ Hand delivered
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- ☐ Other: _____

By



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